UNE TRANSITION JUSTE

GUIDE À L'INTENTION DES ONG ET DES MEMBRES DE LA SOCIÉTÉ CIVILE SUR LA RÉGLEMENTATION PROVINCIALE RELATIVE AUX DEVOIRS DES ADMINISTRATEURS CONCERNANT LES RISQUES LIÉS AU CLIMAT

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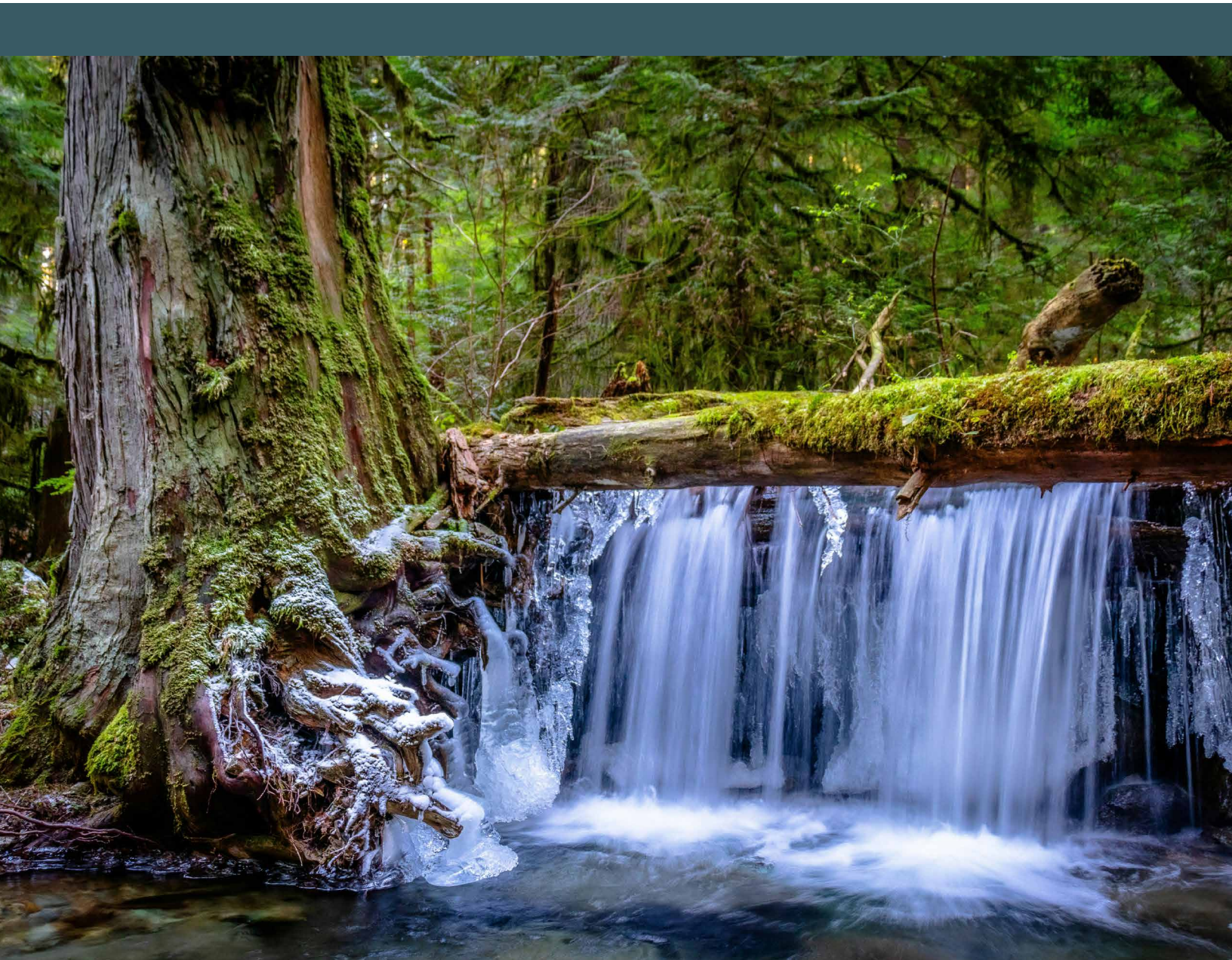
Canada Climate Law Initiative | L'Initiative canadienne de droit climatique



Une transition juste :
Guide à l'intention des ONG et des membres de la société civile sur la réglementation provinciale relative aux devoirs des administrateurs concernant les risques liés au climat

Résumé

Les organisations non gouvernementales (ONG) et les membres de la société civile continuent de réclamer une législation efficace pour s'attaquer sérieusement aux causes et aux effets des changements climatiques, notamment au niveau de la protection environnementale, des mesures d'atténuation et d'adaptation, de la responsabilité en matière climatique et des stratégies visant la neutralité carbone. Plus récemment, ces acteurs ont réalisé qu'une transition vers la carboneutralité nécessitait une approche économique globale, ce qui signifie que les entreprises, les institutions financières et les caisses de retraite doivent contribuer de façon substantielle à ce processus, si nous voulons éviter les conséquences catastrophiques des changements climatiques. Toutefois, la multitude de lois et d'organismes de réglementation régissant les pratiques des entreprises, des caisses de retraite, des banques, des compagnies d'assurance et autres institutions financières peut prêter à confusion. Il est néanmoins essentiel que les voix des membres de la société civile se fassent entendre dans les débats politiques houleux qui se déroulent actuellement. L'Initiative canadienne de droit climatique (CCLI) a élaboré ce guide dans le but d'aider les parties prenantes à analyser l'évolution des politiques concernant le droit des sociétés et la législation applicable aux services financiers, sur lesquels s'appuiera la transition vers une économie neutre en carbone.

Ce guide commence par décrire brièvement les principaux éléments de gouvernance prévus par le droit des sociétés, le droit des valeurs mobilières et la législation applicable aux services financiers et aux pensions, qui créent des obligations fiduciaires pour les administrateurs et autres fiduciaires. Cette introduction fait référence à certains travaux de recherche effectués par CCLI en vue d'une transition juste vers une économie circulaire et neutre en carbone, pouvant être pris en considération par les ONG et les autres parties prenantes pour formuler leur propre position en matière de politiques.

Ce guide résume ensuite les principales dispositions législatives provinciales régissant les pratiques des entités concernées en Ontario, au Québec, en Colombie-Britannique et en Alberta. Ces informations sont fournies sous la forme de questions, fréquemment posées à CCLI par les ONG, accompagnées de réponses explicites. Les principales lois et autorités réglementaires des six autres provinces, en vigueur au mois de mars 2024, sont également indiquées. Le présent guide n'a pas pour but de fournir un quelconque avis juridique. Son objectif est plutôt de proposer des idées et des outils permettant aux membres de la société civile de formuler leur propre point de vue sur les politiques nécessaires à la transition économique du Canada, en mettant l'accent sur le secteur des entreprises et des services financiers.

À propos de l'Initiative canadienne de droit climatique

L'Initiative canadienne de droit climatique (CCLI) fournit aux entreprises et organismes de réglementation des conseils en matière de gouvernance climatique afin de leur permettre de prendre des décisions éclairées en vue d'une économie neutre en carbone. Alimentés par l'expertise la plus pointue du pays, nous engageons le dialogue avec des conseils d'administration et de fiduciaires pour nous assurer qu'ils comprennent bien leurs

devoirs légaux en matière de changement climatique. Nos recherches juridiques nous permettent de garder une longueur d'avance, dans un paysage réglementaire qui évolue rapidement.

CCLI est soutenue financièrement par des fondations familiales et dirigée par ses principales co-investigatrices, professeures à Peter A. Allard School of Law de l'University of British Columbia et à Osgoode Hall Law School de York University.

Remerciements

CCLI tient à remercier la Fondation familiale Trottier de son soutien financier à ce projet. Nous sommes sincèrement reconnaissants à Jenaya Copithorne (UBC Law) d'avoir effectué des recherches approfondies et compilé la législation et la réglementation particulière à chaque province, ainsi que les liens vers les autorités pertinentes régissant les entreprises et les services financiers concernés, dans la partie II de ce guide. Nous remercions également la Dre Janis Sarra d'avoir rédigé la partie I de ce guide, ainsi que Sonia li Trottier et Melissa Reichwage de l'aide qu'elles ont apportée à la production de cet ouvrage. Veuillez adresser vos questions à ccli-info@allard.ubc.ca.

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Introduction à ce guide

Le Groupe d'experts intergouvernemental sur l'évolution du climat (GIEC) des Nations Unies indique que l'activité humaine a déjà provoqué un réchauffement de la planète de 1 °C par rapport aux niveaux préindustriels et que, si ce réchauffement se poursuit au rythme actuel, les températures atteindront 1,5 °C dès 2030[1]. La Cour suprême du Canada fait par ailleurs observer que le changement climatique induit par l'être humain constitue un défi existentiel pour l'avenir de l'humanité.[2] Quant au gouvernement du Canada, il signale que l'ensemble du pays se réchauffe à un rythme environ trois fois plus rapide que le reste de la planète[3].

Au Canada, les organisations non gouvernementales et autres mouvements de la société civile (ci-après désignés conjointement comme les « ONG ») plaident depuis longtemps en faveur de politiques cohérentes pour atténuer les changements climatiques et s'y adapter. Ces dernières années, ces organisations ont commencé à s'intéresser aux aspects financiers des risques et opportunités climatiques. Il est désormais admis que, pour parvenir à zéro émission nette de gaz à effet de serre (GES), une « approche économique globale » est nécessaire, ce qui signifie que les entreprises, les coopératives financières, les compagnies d'assurance et les caisses de retraite doivent contribuer de façon substantielle à la transition du Canada vers la carboneutralité. Si, dans le cadre des politiques du gouvernement fédéral, il est facile de déterminer quels sont les lois applicables et les ministères responsables de réglementer les pratiques des entreprises, des institutions financières et des caisses de retraite, la réglementation provinciale n'est, en revanche, pas aussi évidente.

Toutes les composantes de la société, y compris les entreprises, doivent s'adapter aux risques physiques et de transition découlant des changements climatiques et les atténuer; ceci inclut de graves risques financiers. En 2017, à la demande des ministres des Finances du G20, le Groupe de travail sur l'information financière relative aux changements climatiques (GIFCC) du Conseil de stabilité financière a défini quatre domaines dans lesquels les entreprises et les institutions financières devraient identifier, gérer et rendre compte des risques climatiques auxquelles elles sont exposées : gouvernance, gestion des risques, stratégie, et objectifs et indicateurs[4]. Plus récemment, le Conseil international de normes de durabilité (ISSB) de la Fondation des normes internationales d'information financière (IFRS) a mis au point des normes pour aider les entreprises et organisations financières à gérer et rendre compte des risques et

[1] 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.

[2] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, [2021] 1 SCR 175 at paras 2, 167.

[3] Government of Canada, Climate change adaptation in Canada.

[4] Task Force on Climate Related Financial Disclosures, Recommendation of the Task Force on Climate-related Financial Disclosures, (June 2017).

opportunités climatiques.[5] Les normes concernant les Obligations générales en matière d'informations financières liées aux changements climatiques (IFRS S1) et les Informations à fournir en lien avec les changements climatiques (IFRS S2) exigent des rapports sur la gestion des risques climatiques dans six domaines clés : gouvernance, stratégie, résilience climatique, gestion des risques, indicateurs et objectifs, ainsi que situation et performance financières et flux de trésorerie.

À ce jour, l'intégration de ces changements dans le cadre réglementaire canadien, en particulier au niveau provincial, n'a guère progressé. Au niveau fédéral, il existe des directives à l'intention des banques et compagnies d'assurance [6], et en mars 2014, le nouveau Conseil canadien des normes d'information sur la durabilité (CCNID) a publié les Normes canadiennes d'information sur la durabilité, avec le Projet NCID 1, *Obligations générales en matière d'informations financières liées à la durabilité*[7] et le Projet NCID 2, *Informations à fournir en lien avec les changements climatiques*.[8] La NCID 1 et la NCID 2 adoptent les normes IFRS sans modification, à l'exception de la date d'entrée en vigueur et de l'allègement transitoire. Par exemple, l'allègement transitoire proposé pour la divulgation des émissions de GES relevant du champ d'application 3 passerait d'une période d'un an, accordée par l'ISSB, à deux ans[9]. Le CCNID tient actuellement une période de consultations jusqu'au 10 juin 2024[10],et les ONG pourraient donc souhaiter faire des propositions sur ces projets de normes.

Une autre évolution importante au niveau fédéral a trait au Conseil d'action en matière de finance durable (CAFD), avec le *Rapport sur la feuille de route de la taxonomie – Mobiliser la finance pour une croissance durable en définissant les investissements verts et les investissements de transition* , qui formule des recommandations sur le bien-fondé, la conception et la mise en œuvre d'une taxonomie de la finance verte et de transition pour le Canada. Ce rapport indique que, pour parvenir à une économie neutre en carbone, le Canada doit augmenter rapidement ses investissements dans le domaine climatique; par ailleurs, il estime que le déficit actuel atteint jusqu'à 115 milliards de dollars par an[11]. L'objectif de la taxonomie est de favoriser l'émission d'instruments financiers verts et de transition, compatibles avec l'objectif du Canada d'atteindre la neutralité carbone d'ici 2050. Dans le cadre de cette taxonomie, les entreprises émettrices doivent satisfaire à trois catégories d'exigences pour émettre des instruments financiers verts et/ou de transition : elles doivent se conformer aux obligations relatives à l'établissement d'objectifs de carboneutralité au niveau de l'entreprise, à la planification de la transition et à la divulgation d'information sur le climat, conformément aux nouvelles exigences réglementaires nationales et aux normes et meilleures pratiques internationales, afin de garantir que les projets financés dans le cadre de la taxonomie soutiennent des transitions crédibles; les entreprises émettant des instruments financiers doivent utiliser des catégories afin de déterminer si le projet peut être considéré comme « vert » ou « de

[5] International Financial Reporting Standards (IFRS) Foundation, International Sustainability Standards Board (ISSB), S2 Climate-related Disclosures (2023). See also IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information (2023).
[6] OSFI, Guideline B-15 Climate Risk Management, (2023). See the discussion at notes 34 to 37.
[7] CSSB, CSDS 1's "primary objective is to require an entity to disclose information about its sustainability-related risks and opportunities. Proposed CSDS 1 includes definitions and information required to prepare a complete set of sustainability disclosures and a standard for sustainability-related disclosures", In Brief – A plain and simple overview of the recently issued Exposure Drafts, "Canadian Sustainability Disclosure Standard (CSDS) 1, General Requirements for Disclosure of Sustainability-related Financial Information" and "CSDS 2, Climate-related Disclosures" (frascanada.ca).
[8] CSSB, CSSB ExpCosure Draft – s E1Proposed Canadian Sustainability Disclosure Standard (CSDS) 2, Climate-related Disclosures (13 March 2024).
[9] CSSB, note 8 at para C4.
[10] CSSB, Media Release – Canadian Sustainability Standards Board Announces First Canadian Sustainability Disclosure Standards for Public Consultation (frascanada.ca).
[11] SFAC, *Taxonomy Roadmap Report, Mobilizing Finance for Sustainable Growth by Defining Green and Transition Investments* (September 2022) at 1.

transition », conformément aux critères de la taxonomie, ou s'il est, par défaut, inadmissible; et l'entreprise émettrice doit évaluer le projet par rapport à des critères d'« absence de préjudice important » pour s'assurer qu'il ne nuit pas à d'autres objectifs environnementaux, sociaux et de gouvernance (ESG)[12]. Au-delà des initiatives strictement provinciales, les ONG pourraient envisager de soumettre des propositions de politiques aux gouvernements fédéral et provinciaux pour s'assurer que le Canada élabore une taxonomie cohérente dès que possible. Nous avons besoin de définitions normalisées et crédibles de la finance verte et de la finance de transition afin de soutenir la création de nouveaux produits financiers durables et d'appuyer l'élaboration de plans de transition pertinents. La proposition soumise par le CAFD au gouvernement fédéral prévoit que la gouvernance du Conseil de la Taxonomie envisagé soit transparente, crédible, orientée vers les résultats, dotée de ressources suffisantes et inclut le gouvernement fédéral, les acteurs du secteur financier et la participation des provinces, territoires et peuples autochtones[13].

L'Initiative canadienne de droit climatique (CCLI) a élaboré ce guide pour aider les ONG à identifier les lois et les ministères régissant les différents aspects de la gouvernance d'entreprise, du droit des valeurs mobilières et de la législation applicable aux services financiers et aux pensions. La partie I décrit brièvement le contrôle exercé par les provinces dans chacun de ces domaines du droit. Elle contient des liens vers des propositions de politiques pouvant être utiles aux ONG pour élaborer leurs propres politiques financières en matière climatique. La partie II détaille ensuite les textes législatifs et réglementaires se rapportant à des questions précises, fréquemment posées à CCLI sur le droit des sociétés, la loi sur les valeurs mobilières et la législation applicable aux services financiers, et pour savoir quelles sont les normes législatives, les obligations des administrateurs et aux dirigeants, et les autorités de contrôle ou de réglementation appropriées. L'information figurant dans ce guide date du mois de mars 2024.

[12] SFAC, *Taxonomy Roadmap Report,* note 11 at 5-6.
[13] SFAC, "Consultation Summary: Considerations for Taxonomy Council's Governance Manual" (August 2023) at 4.

Partie I – Aperçu du droit des sociétés et de la législation sur les services financiers

Droit des sociétés

Le droit des sociétés régit l'enregistrement et la gouvernance des entreprises au Canada. Le droit des sociétés confère aux administrateurs la responsabilité de gérer ou de superviser la gestion des activités et des affaires de la société. Le conseil d'administration peut déléguer une partie de ses pouvoirs à la direction, mais cela n'exempte pas les administrateurs de leurs responsabilités.

La *Loi canadienne sur les sociétés par actions (LCSA)* concerne les sociétés de droit fédéral et chaque province et territoire dispose de ses propres lois sur les sociétés, dont beaucoup reflètent les dispositions de la *LCSA*, mais avec un certain nombre de différences. Toutes ces lois imposent une obligation fiduciaire aux administrateurs et aux dirigeants. En général, cette obligation exige que chaque administrateur et chaque dirigeant, dans l'exercice de ses pouvoirs et l'exécution de ses obligations envers la société, agisse avec intégrité et de bonne foi au mieux des intérêts de ladite société, avec le soin, la diligence et la compétence dont ferait preuve, en pareilles circonstances, une personne prudente.

Alors que la *LCSA* stipule expressément que les administrateurs peuvent prendre en considération l'intérêt des parties prenantes, telles que les employés, et la protection l'environnement, aucune des lois provinciales ne prévoit de disposition similaire. Toutefois, cela n'est pas nécessaire, car les risques climatiques sont désormais si prégnants que pour prendre des décisions dans l'intérêt de la société, les administrateurs et les dirigeants n'ont guère d'autre choix que de gérer ces risques et opportunités. L'opinion légale exprimée par Carol Hansell reflète les avis juridiques à l'échelle mondiale, selon lesquels les administrateurs et les dirigeants de sociétés ont l'obligation fiduciaire d'identifier et de gérer les risques climatiques. Selon Carol Hansell :

> Le devoir, pour les conseils d'administration, de prendre en compte les enjeux liés aux risques de changements climatiques, se fonde sur les obligations de chaque administrateur à l'égard de la société pour laquelle il travaille. Dans l'exercice de leur gestion ou de leur supervision de la gestion des risques, les administrateurs doivent remplir le critère objectif voulant qu'ils agissent comme le ferait en pareilles circonstances, une personne prudente. Les administrateurs doivent notamment se défaire des idées préconçues qu'ils pourraient avoir quant à la réalité ou à l'imminence du risque de changements climatiques, et être ouverts aux informations affectant l'activité de la société. Ils doivent exiger des rapports et recommandations de la part de la direction et auprès de sources externes, le cas échéant, et veiller à ce que le risque de changements climatiques soit envisagé par la société de manière judicieuse.

Dans un rapport publié par CCLI en 2018 et intitulé *Fiduciary Obligations in Business and Investment : Implications of Climate Change*, la Dre Janis Sarra fait observer :

> En vertu du droit des sociétés et de la common law, l'obligation fiduciaire exige des administrateurs et des dirigeants qu'ils identifient et circonscrivent les risques, entre autres financiers, liés au climat. Dans le cadre de cette obligation d'agir dans l'intérêt de l'entreprise, ils doivent suivre de près l'évolution des connaissances sur les risques physiques et de transition liés aux changements climatiques, et analyser la manière dont ces risques peuvent avoir des répercussions sur leur société. Selon les activités économiques de l'entreprise, le risque peut être limité ou très élevé, mais les administrateurs et les dirigeants ont l'obligation de s'informer, d'élaborer des stratégies pour y faire face et d'assurer un suivi permanent pour veiller à ce que celles-ci demeurent adaptées. Les administrateurs ont l'obligation fiduciaire de superviser et de contrôler les actions des personnes chargées des mesures d'atténuation et d'adaptation, et de mettre en place des mécanismes permettant de réagir rapidement si le profil de risque de l'entreprise venait à changer[14].

Les conclusions des tribunaux canadiens sur l'étendue des obligations des administrateurs viennent compléter les statuts des sociétés. La Cour suprême du Canada a ainsi déclaré que, dans l'exercice intègre et de bonne foi de leurs fonctions au mieux des intérêts de la société, les administrateurs ont une obligation fiduciaire, qui est un concept large et contextuel ne se limitant pas au profit à court terme ou à la valeur de l'action[15]. Lorsque la société est en activité, les administrateurs doivent tenir compte de son intérêt à long terme[16]. La Cour a également estimé que pour déterminer si les administrateurs agissent au mieux des intérêts de la société, il peut être légitime, de la part du conseil d'administration et eu égard à l'ensemble des circonstances entourant chaque affaire, de prendre en considération l'intérêt des actionnaires, des salariés, des fournisseurs, des créanciers, des consommateurs, des pouvoirs publics et la protection de l'environnement[17].

Un autre exemple porte sur un jugement concernant la surveillance, par le conseil d'administration, de la conformité d'une organisation avec les lois environnementales, dans lequel la Cour de l'Ontario a statué que les administrateurs ont la responsabilité d'examiner les rapports de conformité environnementale fournis par les dirigeants de la société; ils sont en droit d'accorder raisonnablement foi aux rapports qui leur sont fournis par la direction de la société, les consultants ou d'autres parties informées, mais ils doivent apporter la preuve que les dirigeants s'attaquent promptement aux problèmes environnementaux portés à leur attention; les administrateurs doivent en outre connaître les normes en vigueur dans leur secteur d'activité et dans d'autres secteurs présentant des risques environnementaux similaires; et ils doivent réagir immédiatement et personnellement lorsqu'ils constatent une défaillance du système[18].

L'obligation fiduciaire exige des administrateurs qu'ils prennent des décisions en se fondant sur des échéances plus lointaines que le trimestre ou l'exercice financier, ou allant au-delà du profit/retour sur investissement pour une période aussi limitée. Les administrateurs ont le devoir de définir et de gérer les coûts et avantages potentiels des risques climatiques, même si ces variables ne peuvent pas être

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[14] Janis Sarra, *Fiduciary Obligations in Business and Investment: Implications of Climate Change* (CCLI, April 2018).
[15] *BCE Inc v 1976 Debentureholders,* 2008 SCC 69 (SCC) at paras 38, 44.
[16] *BCE Inc v 1976 Debentureholders,* note 15. For an extensive discussion of fiduciary duty in relation to climate change, see Sarra, *Fiduciary Obligations in Business and Investment: Implications of Climate Change,* note 14.
[17] *Peoples Department Stores Inc (Trustee of) v Wise,* [2004] 3 SCR 461, 2004 SCC 68 (SCC) at para 42.
[18] *R v Bata Industries Ltd*, 1992 CarswellOnt 211 at para 147, 9 O.R. (3 d) 329 (Ont CJ (Prov Div)).

entièrement quantifiées dans l'immédiat[19]. L'essentiel est que les administrateurs fassent preuve de diligence. Les tribunaux ont déclaré que, sans examiner les décisions des conseils d'administration à la loupe, ils analysent néanmoins ces décisions, et notamment leur contexte et l'étendue des informations sur lesquelles elles sont fondées. Les conseils d'administration doivent procéder à une analyse raisonnée avant de prendre des décisions, notamment en s'informant sur les faits importants connexes et en se renseignant pour évaluer les informations qui leur sont présentées et demander conseil. Si les administrateurs ont rendu un jugement inintelligent ou inconsidéré, ou s'ils ont fait preuve d'une passivité excessive, les tribunaux ne s'en remettront pas au jugement du conseil d'administration.

À ce jour, il n'existe pas au Canada de jurisprudence clarifiant expressément l'obligation fiduciaire des administrateurs en matière de changements climatiques. De même, il n'existe pas encore au Canada de réglementation obligeant toutes les entreprises à divulguer ce qu'elles font pour gérer les risques et opportunités liés au climat. Comme nous le verrons dans la partie suivante, le droit des valeurs mobilières prévoit quelques exigences de base pour les sociétés cotées en bourse, mais il existe des centaines de milliers de sociétés canadiennes, parmi lesquelles certaines des plus importantes entreprises familiales du pays, qui sont privées et ne sont donc pas soumises à cette législation.

Dans le cadre du droit des sociétés, CCLI a demandé au gouvernement fédéral et à un certain nombre de gouvernements provinciaux d'adopter une réglementation exigeant que toutes les grandes et moyennes entreprises divulguent ce qu'elles font pour gérer les risques climatiques et permettre à l'économie canadienne de progresser dans ses engagements déclarés en matière de carboneutralité[20]. Dans le présent guide, les rubriques consacrées au droit des sociétés fournissent un point de référence pratique sur les obligations actuellement en vigueur et les organismes de réglementation responsables; ceci permettra aux ONG de déterminer les aspects sur lesquels elles souhaitent se concentrer lors de l'élaboration de propositions de réformes visant à encourager ou à obliger les entreprises à gérer et à divulguer leurs stratégies de transition vers la carboneutralité.

La législation pertinente, ainsi que les ministères de chaque gouvernement provincial exerçant une surveillance réglementaire sur les sociétés, les dispositions légales définissant les obligations des administrateurs et des dirigeants, certaines des principales exigences en matière de gouvernance susceptibles d'être renforcées pour attirer l'attention sur les risques et opportunités climatiques, les dispositions légales permettant aux parties prenantes d'une société de demander réparation en cas de manquement à ces obligations, les recours possibles et les moyens de défense dont disposent les administrateurs en cas de manquement présumé à leurs obligations sont indiqués dans la partie II de ce guide.

Droit des valeurs mobilières

Au Canada, le droit des valeurs mobilières est réglementé au niveau provincial et territorial[21]; toutefois, sous l'égide des Autorités canadiennes en valeurs mobilières (ACVM), les autorités provinciales et territoriales de réglementation des valeurs mobilières publient souvent des règlements et des avis du personnel représentant un consensus entre tous les membres des ACVM. Ces règlements sont ensuite

[19] Sarra, *Fiduciary Obligations in Business and Investment: Implications of Climate Change,* note 14 at 5.
[20] See for example, CCLI, "Policy Submission to the Premier and the BC Government on Strengthening Climate Resilience in the Financial Services and Corporate Sectors" (November 2023) and CCLI, Policy Submission to federal Ministers Champagne and Guilbeault on Amendments to *CBCA* Regulation (February 2023).
[21] In *Reference re Securities Act,* 2011 SCC 66, [2011] 3 SCR 837 (SCC).

adoptés en tant que législation locale subordonnée à la *Loi sur les valeurs mobilières* de chaque province ou territoire canadien ou aux autres lois applicables. Parfois, il faut du temps pour parvenir à un consensus national; plusieurs provinces peuvent alors convenir de publier un règlement approuvé dans leur juridiction, appelé règlement d'application multilatérale, qui finit souvent par devenir un règlement d'application nationale, adopté par la suite par l'ensemble des gouvernements. Dans le cadre du droit des valeurs mobilières, lorsque les ONG étudient les politiques envisageables en ce qui concerne les obligations des administrateurs en matière de changements climatiques, elles doivent tenir compte à la fois de la législation sur les valeurs mobilières en vigueur dans leur juridiction et de la possibilité de créer des règlements d'application nationale ou multilatérale et/ou de les améliorer.

C'est en 2019 que les ACVM ont fait une première déclaration sans équivoque sur les risques financiers liés au climat, avec l'Avis 51-358 du personnel des ACVM - Information sur les risques liés au changement climatique (Avis 51-358), indiquant que, si le risque climatique est significatif, il doit être publiquement divulgué par les émetteurs (les sociétés cotées en bourse).

Le Canada dispose déjà d'un règlement sur l'information continue exigeant des émetteurs concernés qu'ils divulguent les risques significatifs affectant leur activité et, lorsque cela est possible, les répercussions financières de ces risques[22]. Les ACVM ont déclaré que « malgré les incertitudes potentielles et l'horizon temporel plus long associés à ces risques, le conseil et la direction devraient prendre des mesures appropriées pour les comprendre et en apprécier l'importance relative pour leur entreprise. Cette appréciation devrait s'étendre à un large éventail de risques liés au changement climatique, à court, à moyen et à long terme »[23].

En 2021, les ACVM ont lancé une consultation sur le Projet de Règlement 51-107 sur l'information liée aux questions climatiques (Règlement 51-107). Il est regrettable que ce projet ait manqué de consistance en ce qui concernait la divulgation d'information liée au climat, car cela aurait permis de commencer à créer quelques normes de référence, et la grande majorité des investisseurs canadiens sont en faveur d'adopter rapidement une norme nationale[24]. Depuis lors, les choses ont avancé bien au-delà du projet de Règlement 51-107, et CCLI a vivement recommandé aux ACVM de réviser et de finaliser un règlement qui suive le rythme des évolutions mondiales[25]. La proposition de politique soumise par CCLI aux autorités de réglementation des valeurs mobilières en février 2024, intitulée *L'étoile polaire du Canada en matière de divulgation climatique : les organismes de règlementation des valeurs mobilières doivent aligner le Règlement 51-107 sur les évolutions mondiales* donne quelques éclaircissements et formule des recommandations spécifiques que les ONG pourraient souhaiter prendre en considération, notamment :

1. Le Règlement 51-107 devrait avoir pour objectif explicite d'exiger des émetteurs qu'ils fournissent des informations sur les risques et opportunités climatiques pouvant vraisemblablement affecter leur flux de trésorerie, leur accès aux financements ou le coût des capitaux à court, moyen ou long terme.

2. Le Règlement 51-107 devrait adopter le cadre IFRS de l'ISSB concernant l'information à fournir par les émetteurs sur les risques et opportunités financiers liés au climat, notamment

[22] NI 51-102 Continuous Disclosure Obligations.
[23] CSA, SN 51-358 Reporting Climate Chance-related Risks (2019).
[24] See J Sarra, J Copithorne and M Irish, "Summary of Submissions to Canadian Securities Administrators on Proposed National Instrument 51-107 Disclosure of Climate-related Matters" (CCLI, March 2022).
[25] For an analysis of CCLI's recommendations, see J Sarra, *Canada's North Star in Climate Disclosure: Securities Regulators Must Align NI 51-107 with Global Developments* (CCLI, February 2024) (*Canada's North Star*).

sur la gouvernance, la stratégie, la gestion des risques, la situation financière, la performance financière et les flux de trésorerie, la résilience climatique, ainsi que les objectifs et indicateurs utilisés dans le cadre de cette divulgation.

3. Le Règlement 51-107 devrait exiger des émetteurs qu'ils divulguent leurs plans de transition climatique et expliquent leurs objectifs de réduction des émissions et les actions mises en œuvre pour atteindre la carboneutralité, ainsi que l'évaluation et la communication des progrès réalisés chaque année.

4. Le Règlement 51-107 devrait prévoir une « sphère de sécurité » limitée dans le temps contre la responsabilité applicable au marché secondaire en ce qui a trait à la divulgation des émissions du champ d'application 3 et des scénarios climatiques.

5. Le Règlement 51-107 devrait tenir compte de la diversité des émetteurs sur les marchés canadiens en adoptant la disposition de l'IFRS S2 selon laquelle un émetteur « doit tenir compte des informations raisonnables et justifiables qu'il est possible d'obtenir sans devoir engager des coûts ou des efforts déraisonnables, et inclure des renseignements au sujet d'évènements passés, des conditions actuelles et des conditions économiques futures prévues »[26]. En ce qui concerne les informations à fournir sur la situation financière, la performance financière et les flux de trésorerie, le Règlement 51-107 devrait envisager l'adoption de la disposition de l'IFRS S2 relative à l'utilisation d'une approche proportionnée aux compétences, aux capacités et aux ressources dont dispose l'émetteur pour préparer ces informations.

6. Le Règlement 51-107 devrait s'appliquer aux émetteurs émergents, avec des exigences simplifiées pour les rapports concernant uniquement la gouvernance et la gestion des risques au cours des deux premières années.

7. Les ACVM et leurs commissions membres devraient approuver la feuille de route du Conseil d'action en matière de finance durable (CAFD) sur la finance verte et la finance de transition; en tant que membres du groupe consultatif des parties prenantes des gouvernements autochtones, provinciaux et territoriaux du Conseil de la taxonomie, elles devraient coopérer et formuler des recommandations sur l'élaboration de la taxonomie de la finance verte et de transition; en outre, le président de ce groupe devrait siéger au Conseil[27].

Les ACVM ont publié un avis du personnel mettant en garde contre les divulgations s'apparentant à de l'écoblanchiment,[28] mais à ce jour, CCLI n'a pas pu trouver de rapport public sur les efforts de mise en application de cet avis.

Dans la partie II, ce guide indique la commission ou le ministère responsable des valeurs mobilières dans chaque province, la loi régissant l'émission de valeurs mobilières par une société commerciale auprès du public dans la juridiction concernée, les articles législatifs et règlements connexes imposant des obligations aux dirigeants et aux administrateurs de sociétés relatives aux informations qu'ils doivent communiquer au public par le biais de prospectus, de rapports de gestion, d'états financiers et d'autres

[26] IFRS S2 Climate-related Disclosures, note 5, para 11.
[27] IFRS S2 Climate-related Disclosures, note 5, para 18.
[28] CSA SN 51-364 Continuous Disclosure Review Program Activities (3 November 2022) Overly Promotional Disclosure (Greenwashing)

divulgations, ainsi que les règles applicables à la communication des informations prospectives, qui sont particulièrement importantes pour les objectifs et plans de transition liés au climat. Ce guide comporte également des rubriques où sont abordées les conséquences du non-respect des normes de divulgation prévues par la loi et du délit de divulgation trompeuse, ainsi que la responsabilité des dirigeants et des administrateurs en cas d'infraction; le pouvoir des autorités de réglementation à prendre des mesures à l'encontre des dirigeants et des administrateurs en cas d'infraction est également abordé, ainsi que les recours éventuellement disponibles, à la fois pour les autorités de réglementation et pour les investisseurs. En outre, les moyens de défense fondés sur la sphère de sécurité pour les administrateurs et les dirigeants sont aussi indiqués.

Parmi les questions politiques que les ONG pourraient souhaiter examiner, citons : la promotion d'une norme nationale exhaustive de divulgation financière liée au climat pour toutes les sociétés cotées en bourse; l'obligation pour les émetteurs d'élaborer des plans de transition vers la carboneutralité; l'alignement de la divulgation en vertu du droit des valeurs mobilières sur les normes internationales élaborées dans le cadre des normes IFRS S1 et IFRS S2; et la demande aux autorités de réglementation provinciale et de réglementation en valeurs mobilières d'encourager l'élaboration rapide d'une taxonomie cohérente de la finance verte et de transition. Les ONG pourraient également envisager de plaider en faveur d'une norme de double importance relative (ou « double matérialité »), comme c'est le cas actuellement dans l'Union européenne qui exige des entreprises qu'elles communiquent les informations nécessaires pour comprendre comment elles sont affectées par les questions de durabilité et quels sont les effets de leur activité sur les personnes et l'environnement[29].

Caisses populaires et coopératives financières

Au Canada, les banques sont soumises à la réglementation fédérale, tandis que les coopératives financières et les caisses populaires (conjointement désignées comme les « coopératives financières ») sont soumises à la réglementation provinciale et territoriale. En vertu de la législation provinciale, les administrateurs sont tenus d'agir dans l'intérêt de la caisse et de faire preuve de prudence et de compétence. CCLI a publié un guide de gouvernance climatique efficace à l'intention des coopératives financières[30], expliquant pourquoi les administrateurs devraient considérer la gouvernance climatique comme un enjeu stratégique, quelles sont leurs obligations, et quels sont les principes qui régissent les coopératives, eu égard aux conséquences des phénomènes météorologiques extrêmes pour les membres de ces institutions. L'ouvrage *Coopératives financières, caisses populaires et gouvernance climatique efficace : coopérer pour un avenir durable* , publié par CCLI, constitue une précieuse ressource pour les administrateurs qui ont besoin de comprendre le contexte juridique, les risques physiques et de transition associés aux changements climatiques, ainsi que les meilleures pratiques développées à travers le monde. Il fournit des recommandations pratiques aux conseils d'administration en matière de surveillance et met l'accent sur l'importance d'inciter les membres des coopératives financières à s'engager sur la voie de la transition vers une économie plus durable. Les coopératives financières peuvent utiliser leur influence pour faciliter une telle transition en aidant leurs membres et les entreprises locales à réduire leurs émissions. En proposant des produits et services pour faire face aux conséquences des évènements physiques et aux risques de transition, les coopératives financières peuvent créer et acquérir de la valeur

[29] See European commission (EC), Corporate Sustainability Reporting Directive (CSRD) (2021); European Union (EU) Sustainable Finance Disclosure Regulation (SFDR), in force March 2021. See also, CCLI, *Canada's North Star,* note 25 at 22, which observes that the CSA should, in the future, consider adoption of a "double materiality" standard, as adopted by the European Commission under the European Sustainability Reporting Standards in July 2023, developed in parallel with the IFRS ISSB standards.

[30] Helen Tooze, *Canadian Credit Unions and Effective Climate Governance, Cooperating for a Sustainable Future* (CCLI and Canadian Credit Union Association, June 2023).

tout en contribuant au bien-être de leurs membres et de leur communauté[31]. Ce guide fournit des recommandations aux conseils d'administration pour améliorer leur surveillance et veiller à ce qu'au sein de l'entreprise, la gouvernance, la stratégie, la gestion des risques, l'établissement des objectifs et les engagements en matière de décarbonation soient efficaces.

La partie II de ce guide porte sur les autorités chargées de superviser les coopératives financières, sur les lois qui les régissent. Les obligations prudentielles des administrateurs et des dirigeants de coopératives financières y sont abordées, en exposant leurs différents devoirs. Cette partie souligne aussi les recours dont peuvent éventuellement disposer les autorités de réglementation, les actionnaires, les clients et les créanciers en cas de manquement aux obligations, et examine les moyens de défense auxquels peuvent recourir les administrateurs et les dirigeants en cas de manquement présumé.

Au niveau fédéral, l'autorité de surveillance prudentielle, le Bureau du surintendant des institutions financières (BSIF), a publié la ligne directrice B-15 sur la Gestion des risques climatiques[32]. Il s'agit de la première directive de ce type publiée par un organisme de réglementation des services financiers en Amérique du Nord. La ligne directrice B-15 précise que les institutions financières fédérales (IFF) doivent mettre en place des structures de gouvernance et de responsabilité pour gérer les risques liés au climat; elles doivent intégrer les conséquences des risques physiques et de transition dans leur modèle et leur stratégie d'entreprise; elles doivent gérer et atténuer les aléas climatiques conformément à leur cadre d'appétence au risque; elles doivent recourir à l'analyse de scénarios pour évaluer les répercussions des changements climatiques sur leur profil de risque, leur stratégie et leur modèle d'entreprise; et elles doivent maintenir des réserves de fonds propres et de liquidités suffisantes pour faire face aux risques climatiques[33]. Les ONG pourraient prendre en considération ces lignes directrices au moment d'élaborer leurs propositions de politiques à l'intention des autorités provinciales de réglementation des services financiers.

Le BSIF signale que les risques financiers liés au climat sont des « risques transversaux », touchant les quatre catégories de risque commercial, résilience financière, résilience opérationnelle et gouvernance des risques[34]. L'évaluation récente de l'état de préparation réalisée par le BSIF en se fondant sur la ligne directrice B-15 révèle que bon nombre d'institutions réglementées s'efforcent d'intégrer progressivement la gestion des risques climatiques à leurs structures, cadres et processus de gouvernance, et renforcent ainsi leur résilience aux risques climatiques; en outre, il s'avère et que, même si un grand nombre de ces institutions n'en sont qu'aux premiers stades de la quantification des risques climatiques, la majorité d'entre elles estiment être en mesure de fournir des informations dans la plupart des catégories requises dans le cadre des divulgations financières liées au climat[35]. Il était essentiel de créer un système d'orientation devant être suivi par l'ensemble des 400 institutions financières réglementées par le gouvernement fédéral. Des exigences similaires sont maintenant nécessaires au niveau provincial.

En ce qui concerne les services financiers, il convient également de souligner qu'au niveau fédéral, la sénatrice Galvez a soumis au Sénat canadien un projet de loi privé qui renforcerait les obligations des

[31] Tooze, note 30.
[32] OSFI, Guideline B-15 Climate Risk Management, (*2023*).
[33] OSFI, Guideline B-15, note 32 at 1-7.
[34] OSFI Overall Risk Rating (ORR), effective April 2024.
[35] OSFI, "Guideline B-15 readiness self-assessment questionnaire: What we heard report" (29 January 2024).

administrateurs des institutions financières et des entités financières connexes réglementées par le gouvernement fédéral en matière de finance durable[36].

À ce jour, une seule province a publié un projet de ligne directrice pour les coopératives financières. Au Québec, l'Autorité des marchés financiers (AMF) a reconnu les risques financiers systémiques dans son projet de Ligne directrice sur la gestion des risques liés aux changements climatiques.[37] Le projet de ligne directrice est clair et accessible, et ses exigences renforceront la résilience des institutions financières supervisées par l'AMF. Il est fondamental de reconnaître que les risques climatiques peuvent altérer de façon significative la sécurité et la solidité des institutions financières réglementées par le Québec, car cela pourrait également nuire à l'intégrité du système financier canadien. CCLI estime qu'il est particulièrement important que l'AMF ait inclus des considérations relatives aux pratiques du marché, exigeant le traitement équitable des clients. Par exemple, dans le cadre du processus d'approbation des produits, l'institution financière devrait s'assurer que l'offre faite à sa clientèle présente les avantages et les caractéristiques que celle-ci est raisonnablement en droit d'attendre, comme une couverture d'assurance contre les catastrophes climatiques, et devrait veiller à ce que l'information relative à cette offre soit adaptée au niveau de littératie financière des clients en question. CCLI soutient fermement ce projet de directive, ainsi que l'analyse qui sous-tend les attentes de l'AMF[38]. Ces orientations sur le traitement équitable des clients renvoient directement à la question d'une « transition juste », et les autorités de surveillance des services financiers des autres provinces pourraient s'inspirer de ces idées.

Les ONG pourraient prendre en considération la recommandation de CCLI visant à renforcer la ligne directrice proposée par l'AMF, notamment en exigeant l'adoption d'un objectif de transition vers la carboneutralité plutôt que d'un plan de transition climatique, ce qui consoliderait la gouvernance, la gestion des risques et la planification stratégique des institutions financières supervisées; par ailleurs, le projet de ligne directrice pourrait être modifié de deux façons : d'une part, en y intégrant explicitement les exigences de divulgation formulées par l'ISSB dans l'IFRS S2 - Informations à fournir en lien avec les changements climatiques, en particulier la divulgation des émissions de GES des champs d'application 1, 2 et 3, pour que les établissements financiers enregistrés au Québec suivent le même rythme que les institutions financières dans le monde eu égard à la gestion et la divulgation des risques climatiques; d'autre part, en incluant les divulgations liées au climat dans l'information financière annuelle, et en les soumettant à l'assurance d'un tiers[39]. Le projet de ligne directrice stipule que l'institution financière doit mettre en œuvre un plan de transition pour guider ses propres actions afin de gérer les risques physiques et de transition vers une économie à plus faibles émissions de carbone[40]. CCLI a suggéré aux institutions financières d'aligner leur objectif sur celui du gouvernement du Québec et du Canada, à savoir atteindre zéro émission nette de GES[41]. Nous recommandons à l'AMF d'exiger que chaque institution financière se dote d'un plan de transition climatique pour atteindre la carboneutralité, sachant qu'un tel plan devrait comporter des objectifs de décarbonation à court, moyen et long terme afin de contribuer à limiter l'augmentation moyenne de la température à 1,5 °C au-dessus des niveaux préindustriels, en utilisant des

[36] Bill S-243, 44th Parliament, 1st session An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts, S-243 (44-1) - LEGISinfo - Parliament of Canada.
[37] AMF, proposed Climate Risk Management Guideline (November 2023), Draft Climate Risk Management Guideline (lautorite.qc.ca) (hereafter AMF). AMF, Ligne directrice sur la gestion des risques liés aux changements climatiques, Projet de Ligne directrice sur la gestion des risques liés aux changements climatiques (lautorite.qc.ca).
[38] CCLI, Submission on Proposed Climate Risk Management Guideline (AMF), (CCLI, 22 January 2024).
[39] CCLI, Submission on Proposed Climate Risk Management Guideline (AMF), note 38.
[40] AMF, note 37 at 6.
[41] Gouvernement du Québec, *LE QUÉBEC CARBONEUTRE, Une contribution essentielle pour le future* (2021), Le Québec carboneutre. Une contribution essentielle pour le futur (quebec.ca); Gouvernement du Québec, Québec's commitments in respect of the climate | Gouvernement du Québec (quebec.ca).

méthodologies fiables permettant de mesurer et de rapporter annuellement les progrès accomplis vers la carboneutralité[42].

En 2023, la British Columbia Financial Services Authority (BCFSA) a fait preuve d'un certain leadership en publiant un document de travail intitulé *Natural Catastrophes and Climate-Related Risks, Managing Uncertainty and Building Resilience in the BC Financial Services Sector (Catastrophes naturelles et risques liés au climat : gérer l'incertitude et acquérir une capacité de résilience dans le secteur des services financiers en C.-B.*[43]*).* La BCFSA propose d'élaborer une ligne directrice sur la gestion des catastrophes naturelles et risques climatiques (*Natural Catastrophe and Climate-related* ou NCCR) qui s'alignerait sur la ligne directrice B-15 du BSIF, exigeant que les coopératives financières (ainsi que les compagnies d'assurance et les caisses de retraite) identifient, évaluent et gèrent les risques auxquels les consommateurs et elles-mêmes sont exposés, conformément aux piliers définis par le GIFCC, à savoir : gouvernance, stratégie, gestion des risques, et indicateurs et objectifs[44]. En ce qui a trait au risque de transition, la BCFSA propose d'utiliser les scénarios standardisés élaborés par le BSIF et la Banque du Canada, en y apportant les modifications nécessaires pour refléter les caractéristiques particulières au contexte de la Colombie-Britannique. La BCFSA s'emploie actuellement à déterminer si toutes ces institutions ont les capacités internes nécessaires pour effectuer une analyse exhaustive des risques et si, dans l'élaboration de ses orientations, elle devrait mieux refléter les caractéristiques spécifiques des coopératives financières juridiquement constituées en Colombie-Britannique. La BCFSA envisage d'exiger des coopératives financières qu'elles divulguent comment elles prévoient de faire face aux catastrophes naturelles et risques climatiques et qu'elles fournissent des éléments fiables, vérifiables et objectifs, qui, à un moment donné, pourraient être sujets à l'assurance d'un tiers[45]. Les ONG pourraient envisager de soumettre une proposition une fois que le projet d'orientation sera publié, plus tard au cours de l'année.

CCLI a réalisé une présentation soutenant les efforts accomplis par la BCFSA à ce jour[46]. Plus particulièrement, CCLI a incité la BCFSA à mettre en œuvre sa ligne directrice sur la gestion des risques financiers liés au climat pour les institutions financières réglementées par la Colombie-Britannique, alignée sur la ligne directrice B-15 du BSIF, en étendant ses exigences aux caisses de retraite sous réglementation provinciale, ainsi qu'aux autres établissements financiers. CCLI a également demandé à la BCFSA d'approuver la feuille de route du CAFD sur la finance verte et de transition et de contribuer, en tant que membre du groupe consultatif des parties prenantes des gouvernements autochtones, provinciaux et territoriaux du Conseil de la taxonomie, en dispensant ses conseils[47].

Dans l'ensemble des provinces et territoires, les ONG pourraient envisager de formuler des recommandations à l'intention des autorités chargées des services financiers, comme exiger, de la part des coopératives financières, des divulgations obligatoires standardisées sujettes à l'assurance d'un tiers, l'élaboration de plans de transition pour atteindre la carboneutralité, et une réflexion sur la meilleure façon d'assurer une transition juste, en tenant compte de l'intérêt de leurs membres et de leurs clients. Les ONG pourraient réfléchir à la manière d'encourager les administrateurs de coopératives financières à considérer la gouvernance climatique et la gestion des risques connexes comme un enjeu stratégique qui s'inscrit dans le droit-fil de leurs principes fondamentaux et de la place centrale accordée à leurs membres.

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[42] CCLI, Submission on Proposed Climate Risk Management Guideline (AMF), note 38 at 2-3.
[43] British Columbia Financial Services Authority (BCFSA), *2023 Discussion PaperNatural Catastrophes and Climate-Related Risks, Managing Uncertainty and Building Resilience in the BC Financial Services Sector* (July 2023).
[44] BCFSA, note 43 at 29.
[45] BCFSA, note 43 at 29.
[46] CCLI, Submission to BC Financial Services Authority (BCFSA) - Canada Climate Law Initiative (ubc.ca) (20 November 2023).
[47] See also CCLI's recommendations in respect of pension plans below.

En faisant preuve d'initiative face aux risques climatiques et possibilités connexes, les administrateurs peuvent guider les coopératives financières vers un avenir résilient et durable pour le bien de leurs membres et des communautés qu'elles servent.

Compagnies d'assurance

Les compagnies d'assurance sont contrôlées par les autorités de surveillance fédérales et provinciales, selon la juridiction qui délivre le droit d'exercice à l'assureur. Alors que la plupart (mais assurément pas toutes) des compagnies d'assurance vie et maladie sont agréées au niveau fédéral, la majorité des assureurs multirisques sont agréés au niveau provincial et territorial.

Les compagnies d'assurance sont confrontées à des aléas financiers particuliers, car les risques et opportunités liés aux changements climatiques concernent à la fois l'actif et le passif du bilan. Pour une analyse détaillée sur la nature de ces risques financiers, veuillez consulter l'ouvrage suivant, publié par CCLI : Assurance vie, maladie et dommages : les administrateurs de compagnies d'assurance canadiennes et la gouvernance climatique efficace. Cet ouvrage étudie comment les changements climatiques représentent dorénavant un risque de nature prudentielle pour les compagnies d'assurance canadiennes; il s'agit un enjeu fondamental pour leur activité qui, en tant que tel, exige toute leur attention. Les changements climatiques créent des risques multiples quant à la conception et à la prestation des produits d'assurance, la couverture des pertes anticipées, les services de souscription, les portefeuilles d'investissement et la gestion des actifs. Le secteur de l'assurance joue un rôle important dans la bonne gestion des risques financiers liés au climat, car il fournit un filet de sécurité à de nombreux Canadiens victimes des sinistres causés par les phénomènes climatiques[48]. Les compagnies d'assurance sont uniques en leur genre, dans la mesure où leurs administrateurs et leurs dirigeants doivent gérer les risques climatiques des deux côtés du bilan. Côté actif, les compagnies d'assurance sont d'importants investisseurs, dont les portefeuilles de placement sont exposés à de nombreux risques tandis que les différents pays effectuent la transition vers la carboneutralité. Côté passif, la fréquence et la gravité accrues des feux de forêt, inondations et autres évènements aigus et chroniques font augmenter le volume de réclamations, alors qu'il devient plus difficile de prévoir et de mettre un prix sur les probabilités d'occurrence de ces évènements[49]. Les administrateurs des compagnies d'assurance devraient donc veiller à ce que les risques et opportunités climatiques soient évalués pour l'ensemble des produits, prestations et activités de l'entreprise[50]. En tant que gestionnaires de risques, porteurs de risques et investisseurs, les assureurs canadiens jouent un rôle crucial dans la gestion des périls climatiques[51].

Pour s'acquitter de leurs obligations, les administrateurs des compagnies d'assurance doivent s'assurer que le conseil d'administration a mis en place des mécanismes de gouvernance efficaces pour superviser et gérer les risques et opportunités climatiques dans l'immédiat et à plus long terme, et élaborer des plans stratégiques pour lutter contre les changements climatiques. Le guide de CCLI sur le secteur de l'assurance explique quelles sont les responsabilités juridiques des administrateurs de compagnies d'assurance eu égard à leur obligation d'exercer un contrôle efficace sur les risques financiers liés au climat et de les divulguer[52]. Il donne un aperçu des meilleures pratiques en matière de gouvernance climatique, notamment des conseils sur la manière dont les administrateurs des compagnies d'assurance peuvent

[48] Janis Sarra, *Life, Health, Property, Casualty: Canadian Insurance Company Directors and Effective Climate Governance* (CCLI, 2021).
[49] Sarra, *Life, Health,* note 48.
[50] Sarra, *Life, Health,* note 48.
[51] Sarra, *Life, Health,* note 48.
[52] Sarra, *Life, Health,* note 48.

commencer à mettre en œuvre une gouvernance, des stratégies, une gestion des risques, des objectifs et indicateurs efficaces, et leur suggère d'élaborer un plan d'action pour la décarbonation, en se fixant des objectifs clairs pouvant être immédiatement mis en œuvre et qui auront des résultats mesurables au cours des cinq prochaines années[53].

La partie II de ce guide aborde le régime législatif des compagnies d'assurance, notamment la législation pertinente et la surveillance réglementaire, les dispositions législatives de chaque province imposant des obligations aux administrateurs et aux dirigeants de société, les infractions potentielles à la loi, les éventuelles sanctions administratives et autres recours.

Comme nous l'avons vu dans la partie précédente, au Québec, l'AMF a proposé une ligne directrice sur la gestion des risques climatiques qui s'appliquera aux compagnies d'assurance titulaires d'un permis dans la province[54].

En Colombie-Britannique, la BCFSA propose d'élaborer une ligne directrice sur les catastrophes naturelles et risques climatiques, qui obligera les compagnies d'assurance juridiquement constituées dans la province à identifier, mesurer et gérer ces aléas dans l'intérêt de l'entreprise et des consommateurs[55]. Elle inclut les séismes dans sa définition des catastrophes naturelles et risques climatiques, ce qui signifie que les compagnies d'assurance devront également tenir compte de leur exposition aux tremblements de terre. La BCFSA souligne qu'elle attend d'ores et déjà des compagnies d'assurance juridiquement constituées en Colombie-Britannique qu'elles se conforment à la directive B-9 du BSIF sur les Saines pratiques de gestion de l'exposition au risque de tremblement de terre[56]. Les attentes de la BCFSA concernant les pratiques du marché s'appliqueraient à la fois aux compagnies d'assurance établies en la Colombie-Britannique et hors de la province[57]. La BCFSA propose également que les compagnies d'assurance juridiquement constituées en Colombie-Britannique divulguent leur approche relative aux catastrophes naturelles et risques climatiques conformément aux piliers définis par le GIFCC (gouvernance, stratégie, gestion des risques, indicateurs et objectifs), en utilisant des informations fiables, vérifiables et objectives, pouvant être soumises à l'assurance d'un tiers. Enfin, la BCFSA propose qu'au moment de souscrire ou de renouveler une police d'assurance habitation, les consommateurs soient informés lorsqu'un bien est exposé à une catastrophe naturelle potentielle ou à un risque climatique particulier[58].

Les ONG pourraient envisager de soumettre une proposition aux autorités provinciales ou territoriales des services financiers, les incitant à demander expressément aux compagnies d'assurance d'intégrer les règles et attentes relatives aux pratiques du marché, à l'instar du projet de ligne directrice du Québec mentionné précédemment et du document de travail de la BCFSA. En incluant une telle exigence à leurs orientations, les autorités de réglementation souligneraient l'importance d'exiger des institutions financières qu'elles identifient et gèrent les risques financiers liés au climat, tant au niveau de leur activité que des consommateurs. Il convient de souligner que les divulgations devraient être obligatoires, standardisées et transparentes, afin de garantir l'équité dans la transition vers la carboneutralité. Les ONG pourraient également envisager de soumettre une proposition sur l'importance d'avoir l'assurance d'un tiers pour garantir l'intégrité des divulgations. Alors que les organismes de réglementation des services

[53] Sarra, *Life, Health,* note 48.
[54] AMF, Climate Risk Management Guideline, note 37.
[55] BCFSA, note 43 at 30.
[56] BCFSA, note 43 at 30.
[57] BCFSA, note 43 at 30.
[58] BCFSA, note 43 at 30.

financiers du Québec et de la Colombie-Britannique travaillent activement à l'élaboration de lignes directrices, les ONG pourraient formuler des recommandations politiques à l'intention des organismes de réglementation des autres provinces et territoires afin d'exiger des institutions financières qu'elles respectent les normes de base en matière de gestion des risques climatiques et de transparence dans le cadre de leur transition.

Caisses de retraite

Au Canada, les caisses de retraite sont réglementées par les provinces, sauf pour les employés du secteur fédéral, qui relèvent du gouvernement fédéral. La législation diffère légèrement à travers le pays, mais dans tous les cas, elle impose un devoir de loyauté et de prudence. Les administrateurs des caisses de retraite canadiennes ont l'obligation fiduciaire d'agir prudemment et au mieux de l'intérêt des bénéficiaires lorsqu'ils prennent des décisions d'investissement concernant les portefeuilles du fonds[59]. Dans sa gestion du régime de retraite et dans son administration et ses décisions d'investissement de la caisse de retraite, l'administrateur doit mettre en œuvre l'ensemble des connaissances et compétences pertinentes qu'il possède ou devrait posséder, eu égard à sa profession, son activité ou sa mission[60]. Les gestionnaires d'actifs engagés par les caisses de retraite pour investir et gérer les actifs du fonds ont également des obligations prudentielles.

Les obligations des fiduciaires des régimes de retraite sont évaluées sur la base du libellé explicite du régime de retraite concerné et de la législation pertinente en matière de retraite et de fiducie[61]. Par exemple, pour un régime de retraite à prestations déterminées, l'objectif est de constituer un revenu viager pour le futur retraité. Les régimes de retraite ont l'obligation de prendre des décisions d'investissement pour créer des caisses de retraite durables, en tenant compte des enjeux intergénérationnels, tels que la nécessité de financer les retraites à court et à moyen terme, et la nécessité d'anticiper sur les besoins des futures générations de bénéficiaires[62].

L'obligation des fiduciaires des caisses de retraite d'agir au mieux des intérêts des bénéficiaires, conformément aux modalités de la fiducie, est évidente à la fois dans le droit législatif et dans la common law, et exige une action déterminée de la part des fiduciaires. En ce qui concerne la répartition des actifs entre les investissements à court et à long terme, l'obligation fiduciaire exclut les placements à court terme qui nuisent aux placements à long terme, car le fonds doit être viable à longue échéance et par conséquent, les fiduciaires doivent tenir compte des risques systémiques, tels que les changements climatiques[63]. Le devoir d'impartialité exige des fiduciaires et des gestionnaires de fonds qu'ils trouvent un équilibre entre les intérêts intergénérationnels dans leurs décisions d'investissement, dans la mesure où l'horizon temporel des travailleurs âgés est très différent de celui de ceux qui viennent d'arriver sur le marché du travail[64]. Les personnes et les entreprises qui gèrent l'argent d'autrui, y compris les administrateurs de caisses de retraite, ont l'obligation, en vertu de la common law, d'agir dans l'intérêt des bénéficiaires plutôt que de servir leurs propres intérêts, et ont notamment un devoir de loyauté et de prudence. L'obligation prudentielle exige des fiduciaires qu'ils gèrent et investissent les fonds de la caisse

[59] Sarra, *Fiduciary Obligations in Business and Investment: Implications of Climate Change,* note 14 at 48. Pension fund trustees must also comply with trustee legislation, which is complementary to their obligations under pension standards legislation.
[60] Sarra, *Fiduciary Obligations in Business and Investment: Implications of Climate Change,* note 14 at 49.
[61] *Burke v Hudson's Bay Co*, [2010] 2 SCR 273 at para 41; *Nolan v Kerry (Canada) Inc*, [2009] 2 SCR 678 at para 187.
[62] Sarra, *ChangeFiduciary Obligations in Business and Investment: Implications of Climate ,* note 14 at 48.
[63] James Hawley, Keith Johnson and Ed Waitzer. "Reclaiming Fiduciary Duty Balance" (2011) 4 *Rotman International Journal of Pension Management* 2 at 13.
[64] Ronald B Davis, *Democratizing Pension Funds, Corporate Governance and Accountability (*Vancouver : UBC Press, 2008) at 54.

de retraite, avec le soin, la diligence et la compétence qu'une personne raisonnablement prudente exercerait dans la gestion des biens d'une autre personne[65].

Les caisses de retraite, qui garantissent la sécurité financière de notre population vieillissante, verront sans doute leurs placements perdre une grande partie de leur valeur si elles ne se détournent pas des investissements dans les combustibles fossiles. Alors qu'un certain nombre de caisses de retraite et leurs prestataires de services sont à l'avant-garde de la communauté des investisseurs et soutiennent la transition vers la carboneutralité[66], beaucoup d'autres sont à la traîne, ce qui risque, à l'avenir, de créer un système de prestations de retraite à deux vitesses. Une réglementation provinciale obligeant les caisses de retraite à identifier clairement et à gérer les risques et opportunités climatiques dans le cadre de leurs stratégies d'investissement serait très utile pour éviter une telle situation.

À ce jour, aucune province n'a adopté de réglementation obligeant les caisses de retraite à avoir un plan de transition vers une économie neutre en carbone, bien qu'une telle ligne directrice soit envisagée par la BCFSA. Dans sa proposition de politique concernant les caisses de retraite réglementées en Colombie-Britannique, CCLI a suggéré à la BCFSA d'aligner la gestion des risques financiers liés au climat sur la ligne directrice fédérale B-15 du BSIF en la matière. Bien qu'en vertu de la *Loi sur les régimes de retraite* de l'Ontario, le règlement 909 stipule que « l'énoncé des politiques et des procédures de placement comprend des renseignements précisant si des facteurs environnementaux, sociaux et de gouvernance sont intégrés dans ces politiques et procédures et, dans l'affirmative, comment ils le sont »[67], aucune norme n'a été fixée et le risque climatique n'est pas spécifiquement cité. Cette référence de base aux énoncés de politique d'investissement ne figure dans la réglementation d'aucune des autres provinces.

CCLI a demandé au ministre des Finances de la Colombie-Britannique de modifier l'article 51 du règlement sur les normes des prestations de retraite[68] conformément au *Pension Benefits Standards Act* de la C.-B.[69], de sorte à exiger que l'énoncé écrit des politiques et procédures d'investissement de l'administrateur du régime de retraite comprenne une déclaration sur la façon dont les risques financiers liés au climat sont abordés, notamment en ce qui a trait à la résilience climatique du régime (atténuation et adaptation) et à la manière dont les risques et les avantages sont évalués dans le cadre des décisions relatives au portefeuille d'investissements et de prêts, étant donné la transition imminente vers une économie neutre en carbone[70].

Les ONG pourraient souhaiter examiner ces questions pour tous les organismes de réglementation des pensions, étant donné le rôle essentiel que jouent les caisses de retraite dans la sécurité financière à long terme des Canadiens. La partie II de ce guide indique l'autorité réglementaire chargée de superviser les pensions dans chaque juridiction concernée, puis examine les principales dispositions législatives régissant la création de régimes de retraite basés sur l'emploi dans ces juridictions, en exposant celles relatives aux obligations prudentielles imposées aux administrateurs et autres fiduciaires de pensions, notamment le devoir de diligence, l'obligation d'établir un énoncé des politiques et procédures d'investissement et les

[65] Sarra, *Fiduciary Obligations in Business and Investment: Implications of Climate Change*, note 14 at 4.
[66] See for example Maple 11 pension plan investment managers, "Companies focused on long-term value must embrace new disclosure framework" (2023), 2023-06-29_CEO-statement-of-support-for-ISSB_ENGLISH.pdf (cppinvestments.com).
[67] Ontario *Pension Benefits Act*, RRO 1990, Regulation 909, section 78(3).
[68] Pension Benefits Standards Regulation BC Reg 71/2015, OC 219/2015, as amended, Pension Benefits Standards Regulation (gov.bc.ca).
[69] *Pension Benefits Standards Act*, SBC 2012, c 30, as amended, Pension Benefits Standards Act (gov.bc.ca).
[70] CCLI, note 20.

divulgations requises, entre autres. Elle définit les sanctions en cas de manquement à ces obligations et les recours possibles.

Comment le reste de ce guide est-il structuré?

La partie II de ce guide est structurée sous forme de questions et de réponses concernant l'Ontario, l'Alberta, la Colombie-Britannique et le Québec. Les questions soulevées ont trait à des domaines juridiques spécifiques - droit des sociétés, droit des valeurs mobilières, droit des coopératives financières, régime législatif des compagnies d'assurance et des caisses de retraite. Les lois comparables dans les six autres provinces sont énumérées et une orientation est fournie pour pouvoir établir des comparaisons entre certaines dispositions dans ces juridictions. La table des matières est conçue pour permettre à l'ONG de cliquer sur le domaine juridique de sa province. Le guide est également disponible en anglais.

Partie II – Régime législatif par province

Ontario

Corporate Law

What department of the government has oversight of the corporation statute?

Ministry of Public and Business Service Delivery
https://www.ontario.ca/page/ministry-public-business-service-delivery

What statute governs the incorporation of business corporations in the jurisdiction?

Business Corporations Act, R.S.O. 1990, c. B. 16
https://www.ontario.ca/laws/statute/90b16

What sections impose duties on the corporation's directors and officers?

Duty to Manage

115(1) – Subject to any unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation.

Duty of Care and Good Faith

134(1) – Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation 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.

Duty to Comply with Law

134(2) – Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.
134(3) – Subject to subsection 108(5), no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach thereof.

Duty to Keep Accurate Records and Make Available for Inspection

140(1) – A corporation shall prepare and maintain, at its registered office or at such other place in Ontario designated by the directors,

(a) the articles and the by-laws and all amendments thereto, and a copy of any unanimous shareholder agreement known to the directors;
(b) minutes of meetings and resolutions of shareholders;
(c) a register of directors in which are set out the names and residence addresses, while directors, including the street and number, if any, and an e-mail address if one is provided, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director;
(d) a securities register complying with section 141;
(e) a register of ownership interests in land complying with section 140.1; and

(f) a register of individuals with significant control over the corporation complying with section 140.2.

140(2) – In addition to the records described in subsection (1), a corporation shall prepare and maintain,

(a) adequate accounting records; and
(b) records containing minutes of meetings and resolutions of the directors and any committee thereof,

but, provided the retention requirements of any taxing authority of Ontario, the government of Canada or any other jurisdiction to which the corporation is subject have been satisfied, the accounting records mentioned in clause (a) need only be retained by the corporation for six years from the end of the last fiscal period to which they relate.

139(1) – Where this Act requires a record to be kept by a corporation, it may be kept in any form.

139(2) – The corporation shall,

(a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
(b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.

139(4) – No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or,

(a) record or assist in recording any information in a record; or
(b) make information purporting to be accurate available in a form referred to in clause (2)(b),

knowing it to be untrue.

Duty to Prepare, Approve, and Provide Financial Statements

155 – The financial statements required under this Act shall be prepared as prescribed by regulation and in accordance with generally accepted accounting principles.

156 – An offering corporation shall prepare and file with the Commission the financial statements required under Part XVIII of the Securities Act.

159(1) – The financial statements shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet of any director authorized to sign and the auditor's report, unless the corporation is exempt under section 148, shall be attached to or accompany the financial statements.

159(2) – A corporation shall not issue, publish or circulate copies of the financial statements, referred to in section 154 unless the financial statements are,

(a) approved and signed in accordance with subsection (1); and
(b) accompanied by the report of the auditor of the corporation, if any.

160(1) – Within 60 days after the date that an interim financial statement required to be filed under the Securities Act and the regulations made under that Act is prepared, an offering corporation shall send a copy of the interim financial statement to all shareholders who have informed the corporation that they wish to receive a copy.

154(1) – The directors shall place before each annual meeting of shareholders,

(a) in the case of a corporation that is not an offering corporation, financial statements for the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting;

(b) in the case of a corporation that is an offering corporation, the financial statements required to be filed under the Securities Act and the regulations thereunder relating separately to,
    (i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and
    (ii) the immediately preceding financial year, if any;
(c) the report of the auditor, if any, to the shareholders; and
(d) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

Gathering Evidence

145(1) – Registered holders of shares, beneficial owners of shares and creditors of a corporation, their agents and legal representatives may examine the records referred to in subsection 140 (1), other than a register of individuals with significant control described in clause 140(1)(f), during the usual business hours of the corporation, and may take extracts from those records, free of charge, and, if the corporation is an offering corporation, any other person may do so upon payment of a reasonable fee.

145(2) – A registered holder or beneficial owner of shares of a corporation is entitled upon request and without charge to one copy of the articles and by-laws and of any unanimous shareholder agreement.

161(1) – A registered holder or a beneficial owner of a security or, in the case of an offering corporation, the Commission may apply, without notice or on such notice as the court may require, to the court for an order directing an investigation to be made of the corporation or any of its affiliates.

161(2) – Where, upon an application under subsection (1), it appears to the court that,
(a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;
(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of a security holder;
(c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
(d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the court may order an investigation to be made of the corporation and any of its affiliates.

161(3) – If a registered holder or a beneficial owner of a security makes an application under subsection (1) and the corporation is an offering corporation, the applicant shall give the Commission reasonable notice of the application and the Commission is entitled to appear and be heard in person or by counsel.

161(4) – An applicant under this section is not required to give security for costs.

161(5) – The hearing of an application made without notice under this section shall be closed to the public.
161(6) – No person may publish anything relating to an application under this section except with the authorization of the court or the written consent of the corporation being investigated.
162(1) – In connection with an investigation under this Part, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order to investigate;
(b) an order appointing and fixing the remuneration of an inspector or replacing an inspector;
(c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
(d) an order authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
(e) an order requiring any person to produce documents or records to the inspector;
(f) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;
(g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;
(h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
(i) an order requiring an inspector to make an interim or final report to the court;
(j) an order determining whether a report of an inspector should be made available for public inspection and ordering that copies be sent to any person the court designates;
(k) an order requiring an inspector to discontinue an investigation;
(l) an order requiring the corporation to pay the costs of the investigation.

Derivative Action

245 – In this Part,
"action" means an action under this Act; ("action")
"complainant" means,

(a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
(b) a director or an officer or a former director or officer of a corporation or of any of its affiliates,
(c) any other person who, in the discretion of the court, is a proper person to make an application under this Part. ("plaignant").

246(1) – Subject to subsection (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the body corporate.
246(2) – No action may be brought and no intervention in an action may be made under subsection (1) unless the complainant has given fourteen days' notice to the directors of the corporation or its subsidiary of the complainant's intention to apply to the court under subsection (1) and the court is satisfied that,

(a) the directors of the corporation or its subsidiary will not bring, diligently prosecute or defend or discontinue the action;
(b) the complainant is acting in good faith; and

(c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

246(2.1) – A complainant is not required to give the notice referred to in subsection (2) if all of the directors of the corporation or its subsidiary are defendants in the action.

246(3) – Where a complainant on an application made without notice can establish to the satisfaction of the court that it is not expedient to give notice as required under subsection (2), the court may make such interim order as it thinks fit pending the complainant giving notice as required.

246(4) – Where a complainant on an application can establish to the satisfaction of the court that an interim order for relief should be made, the court may make such order as it thinks fit.

247 – In connection with an action brought or intervened in under section 246, the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order authorizing the complainant or any other person to control the conduct of the action;
(b) an order giving directions for the conduct of the action;
(c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and
(d) an order requiring the corporation or its subsidiary to pay reasonable legal fees and any other costs reasonably incurred by the complainant in connection with the action.

Oppression Remedy

245 – In this Part,

"action" means an action under this Act; ("action")

"complainant" means,

(d) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
(e) a director or an officer or a former director or officer of a corporation or of any of its affiliates,
(f) any other person who, in the discretion of the court, is a proper person to make an application under this Part. ("plaignant").

248(1) – A complainant and, in the case of an offering corporation, the Commission may apply to the court for an order under this section.

248(2) – Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

(a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;
(b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or
(c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of.

248(3) – In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

(a) an order restraining the conduct complained o
(b) an order appointing a receiver or receiver-manager;

(c) an order to regulate a corporation's affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;
(d) an order directing an issue or exchange of securities;
(e) an order appointing directors in place of or in addition to all or any of the directors then in office;
(f) an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;
(g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the money paid by the security holder for securities;
(h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
(i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 154 or an accounting in such other form as the court may determine;
(j) an order compensating an aggrieved person;
(k) an order directing rectification of the registers or other records of a corporation under section 250;
(l) an order winding up the corporation under section 207;
(m) an order directing an investigation under Part XIII be made; and
(n) an order requiring the trial of any issue.

248(4) – Where an order made under this section directs amendment of the articles or by-laws of a corporation,

(a) the directors shall forthwith comply with subsection 186 (4); and
(b) no other amendment to the articles or by-laws shall be made without the consent of the court, until the court otherwise orders.

248(5) – A shareholder is not entitled to dissent under section 185 if an amendment to the articles is effected under this section.

248(6) – A corporation shall not make a payment to a shareholder under clause (3) (f) or (g) if there are reasonable grounds for believing that,

(a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due; or
(b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

Order for Compliance

253(1) – Where a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver and manager, receiver, or liquidator of a corporation does not comply with this Act, the regulations, articles, by-laws, or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, despite the imposition of any penalty in respect of such non-compliance and in addition to any other right the complainant or creditor has, apply to the court for an order directing the corporation or any person to comply with, or restraining the corporation or any person from acting in breach of, any provisions thereof, and upon such application the court may so order and make any further order it thinks fit.

General Rules When Applying for Remedy

261 – No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

249(1) – An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its affiliate has been or may be approved by the shareholders of such body corporate, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 207, 247 or 248.
249(2) – An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interests of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.
249(3) – A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.
249(4) – In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its affiliate to pay to the complainant interim costs, including reasonable legal fees and disbursements, for which interim costs the complainant may be held accountable to the corporation or its affiliate upon final disposition of the application or action.
254 – Where this Act states that a person may apply to the court, that person may apply for injunctive relief without notice as the rules of the court provide.
255 – An appeal lies to the Divisional Court from any order made by the court under this Act.

Offence of Misrepresentation

256(1) – In this section,
"misrepresentation" means,

(a) an untrue statement of material fact, or
(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

256(2) – Every person who,

(a) makes or assists in making a statement in any material, evidence or information submitted or given under this Act or the regulations to the Director, the Director's delegate or the Commission or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
(b) makes or assists in making a statement in any application, articles, consent, financial statement, information circular, notice, report or other document required to be filed with, furnished or sent to the Director or the Commission under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
(c) fails to file with the Director or the Commission any document required by this Act to be filed with the Director or the Commission; or
(d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made by the Director or the Commission under this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both, or, if such person is a body corporate, to a fine of not more than $25,000.
256(3) – Where a body corporate is guilty of an offence under subsection (2), every director or officer of such body corporate who, without reasonable cause, authorized, permitted or

acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Offence of Non-Compliance

258(1)(j) – Every person who without reasonable cause commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both, or if such person is a body corporate, to a fine of not more than $25,000.

258(2) – Where a body corporate is guilty of an offence under subsection (1), every director or officer of such body corporate who, without reasonable cause, authorized, permitted or acquiesced in such offence is also guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

What sections set out the defenses officers and directors may assert against alleged violations of those duties?

Defence – Breach of Duty of Care and Good Faith

135(4) – A director has complied with his or her duties under subsection 134(2) if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on,

(a) financial statements of the corporation represented to him or her by an officer of the corporation or in a written report of the auditor of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;
(b) an interim or other financial report of the corporation represented to him or her by an officer of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;
(c) a report or advice of an officer or employee of the corporation, where it is reasonable in the circumstances to rely on the report or advice; or
(d) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by any such person

Defence – Offence of Misrepresentation

256(4) – No person is guilty of an offence under section 256(2)(a) or (b) if the person did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Defence – Offence of Non-Compliance

258(2) – Where a body corporate is guilty of an offence under section 258(1), a director or officer of such body corporate is not guilty of the offence if they can prove that they did not, without reasonable cause, authorize, permit or acquiesce in the offence.

Indemnification for Costs

136(1) – A corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or another individual who acts or acted at the corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative,

investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity.

136(2) – A corporation may advance money to a director, officer or other individual for the costs, charges and expenses of a proceeding referred to in subsection (1), but the individual shall repay the money if the individual does not fulfil the conditions set out in subsection (3).

136(3) – A corporation shall not indemnify an individual under subsection (1) unless the individual acted honestly and in good faith with a view to the best interests of the corporation or, as the case may be, to the best interests of the other entity for which the individual acted as a director or officer or in a similar capacity at the corporation's request.

136(4) – In addition to the conditions set out in subsection (3), if the matter is a criminal or administrative action or proceeding that is enforced by a monetary penalty, the corporation shall not indemnify an individual under subsection (1) unless the individual had reasonable grounds for believing that the individual's conduct was lawful.

136(4.1) – A corporation may, with the approval of a court, indemnify an individual referred to in subsection (1), or advance moneys under subsection (2), in respect of an action by or on behalf of the corporation or other entity to obtain a judgment in its favour, to which the individual is made a party because of the individual's association with the corporation or other entity as described in subsection (1), against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in subsection (3).

136(4.2) – Despite subsection (1), an individual referred to in that subsection is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the corporation or other entity as described in subsection (1), if the individual seeking an indemnity,

(a) was not judged by a court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and
(b) fulfils the conditions set out in subsections (3) and (4).

136(5) – A corporation or a person referred to in subsection (1) may apply to the court for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit.

136(6) – Upon an application under subsection (5), the court may order notice to be given to any interested person and such person is entitled to appear and be heard in person or by counsel.

Limitation Periods

259(1) – No proceeding under section 256 [misrepresentation or non-compliance] shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Director as certified by him or her.

259(2) – No proceeding for an offence under this Act or the regulations shall be commenced more than two years after the time when the subject-matter of the offence arose.

Securities Law

What commission or department is responsible for securities law?

Ontario Securities Commission
https://www.osc.ca/en

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

Securities Act R.S.O. 1990, c. S.5
https://www.ontario.ca/laws/statute/90s05

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-102/unofficial-consolidation-national-instrument-51-102-continuous-disclosure-obligations
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-101/unofficial-consolidation-national-instrument-51-101-standards-disclosure-oil-and-gas-activities

Prospectus

Securities Act

56(1) – A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of Ontario securities law.

Management's Discussion & Analysis

National Instrument 51-102

5.1(1) – A reporting issuer must file Management's Discussion & Analysis relating to its annual financial statements and each interim financial report required under Part 4.
5.1(2) – The filing deadline is on or before the earlier of the filing deadline or the actual filing of the annual or interim financial statements, as applicable.
5.4(1) – Issuer must disclose in its annual Management's Discussion & Analysis the designation and number of each class of voting or equity securities (or securities convertible to voting/equity securities) for which there are securities outstanding
5.5(1) – The annual and interim Management's Discussion & Analysis must be approved by the board of directors before being filed.
5.8(2) – A reporting issuer must discuss in its Management's Discussion & Analysis any updates to FLI – events and circumstances likely to cause actual results to differ materially from material FLI relating to a period that is not yet complete that the issuer previously disclosed to the public.
5.8(3) – Sub (2) does not apply if the reporting issuer included the information in a news release and discloses in the Management's Discussion & Analysis that the news release is available on SEDAR.
5.8(4) – Issuer must discuss in its Management's Discussion & Analysis material differences between (a) actual results for the annual or interim period to which the Management's Discussion & Analysis relates, and (b) any previously disclosed FOFI or financial outlook for that period.

Annual Information Form

National Instrument 51-102

6.1 – A reporting issuer that is not a venture issuer must file an annual information form.

6.2 – Filing deadline is on or before the 90th day after the end of the issuer's most recently completed financial year.

Financial Statements

Securities Act

77(1) – Every reporting issuer that is not a mutual fund shall file quarterly interim financial reports, made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

77(2) – Every mutual fund in Ontario shall file interim financial reports every six months, made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

78(1) – Every reporting issuer that is not a mutual fund and every mutual fund in Ontario shall file annual comparative financial statements made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

79(1) – Every reporting issuer or mutual fund in Ontario that is required to file a financial statement under section 77 or 78 shall send a true copy of the financial statement to every holder of its securities whose latest address, as shown on its books, is in Ontario.

Material Changes

Securities Act

75(1) – Where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a news release authorized by a senior officer disclosing the nature and substance of the change.

75(2) – The reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

National Instrument 51-102

1.1 – "Material change" means

(a) a change in the business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer, or

(b) A decision to implement a change made by the board or persons acting in a similar capacity or senior management who believe that confirmation of the board or persons acting in similar capacity is probable.

7.1(1) – If a material change occurs in the affairs of a reporting issuer, the issuer must:

(a) Immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change

(b) As soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.

7.1(2) – Reporting issuer may mark filed material change report as confidential, with written reasons for non-disclosure, if:

(a) In the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by sub (1) would be unduly detrimental to the interests of the reporting issuer, or

(b) The material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer.

7.1(5) – If a report has been filed under sub (2), the issuer must advise the regulator in writing every 10 days if it believes the report should continue to remain confidential, until the material change is generally disclosed OR the board rejects the decision.
7.1(7) – An issuer must promptly generally disclose the material change if the issuer becomes aware of reasonable grounds to believe that persons are selling securities of the reporting issuer with knowledge of the change.

Making Filings Available

Securities Act

140(1) – Where Ontario securities law requires that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection (2), be made available by the Commission for public inspection during the normal business hours of the Commission.
140(2) – Despite subsection (1), the Commission may hold material or any class of material required to be filed by Ontario securities law in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection.

Misleading Disclosure

Securities Act

126.2(1) – A person or company shall not make a statement that the person or company knows or reasonably ought to know,

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
(b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative.

Forward-Looking Information

National Instrument 51-102

"Forward-looking information" = disclosure regarding possible events, conditions or financial performance, including future-oriented financial information (FOFI).
"Future-oriented financial information" (FOFI) = presented in format of statement of financial position, comprehensive income or cash flows
"Financial outlook" = not presented in format of statement of financial position, income or cash flows
4A.1 – This Part applies to forward-looking information (FLI) disclosed by a reporting issuer other than orally.
4A.2 – Reporting issuer must not disclose FLI unless the issuer has a reasonable basis for the FLI.
4A.3 – A reporting issuer that discloses material forward-looking information must include disclosure that

(a) Identifies forward-looking information as such
(b) Cautions users of FLI that actual results may vary from the FLI, and identifies material risk factors that could cause actual results to differ materially from the FLI
(c) States the material factors or assumptions used to develop FLI
(d) Describes the issuer's policy for updating FLI if it includes procedures in addition to those in 5.8.

4B.1 – This part applies to FOFI or a financial outlook that is disclosed by a reporting issuer, other than orally.
4B.2 – Must not disclose FOFI or a financial outlook unless based on assumptions that are reasonable in the circumstances. Must be limited to a period for which the information can be reasonably estimated, and use the accounting policies the issuer expects to use for the period covered.
4B.3 – Must also disclose date management approved the FOFI or FO, explain the purpose of the FOFI/FO, and caution readers that the information may not be appropriate for other purposes.

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Offence of Misleading Disclosure

Securities Act

122(1) – Every person or company that,

(a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Chief Executive Officer of the Commission or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

(b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; or

(c) contravenes Ontario securities law,

is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

122(1.1) – Clauses (1)(a) and (b) do not apply to a statement made or given to the Commission in a submission in respect of a proposed rule or policy.

122(3) – Every director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the company or person, whether or not a charge has been laid or a finding of guilt has been made against the company or person in respect of the offence under subsection (1), is guilty of an offence and is liable on conviction to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

122.1(1) – If a person or company is convicted of an offence under this Act, the court may, in addition to any penalty, order the convicted person or company to make restitution or pay compensation in relation to the offence to an aggrieved person or company.

Directors' and Officers' Liability for Company Violation

Securities Act

129.2 – For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not

complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Order of Tribunal

Securities Act

127(1) – The Tribunal may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:

1. An order that the registration or recognition granted to a person or company under Ontario securities law be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition.
2. An order that trading in any securities by or of a person or company or that trading in any derivatives by a person or company cease permanently or for such period as is specified in the order.
2.1 An order that the acquisition of any securities by a particular person or company is prohibited permanently or for the period specified in the order.
3. An order that any exemptions contained in Ontario securities law do not apply to a person or company permanently or for such period as is specified in the order.
4. An order that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Tribunal.
5. If the Tribunal is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,
    i. be provided by a market participant to a person or company,
    ii. not be provided by a market participant to a person or company, or
    iii. be amended by a market participant to the extent that amendment is practicable.
6. An order that a person or company be reprimanded.
7. An order that a person resign one or more positions that the person holds as a director or officer of an issuer.
8. An order that a person is prohibited from becoming or acting as a director or officer of any issuer.
8.1 An order that a person resign one or more positions that the persons holds as a director or officer of a registrant.
8.2 An order that a person is prohibited from becoming or acting as a director or officer of a registrant.
8.3 An order that a person resign one or more positions that the person holds as a director or officer of an investment fund manager.
8.4 An order that a person is prohibited from becoming or acting as a director or officer of an investment fund manager.
8.5 An order that a person or company is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

9. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

10. If a person or company has not complied with Ontario securities law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

127(2) – An order under this section may be subject to such terms and conditions as may be imposed by the Tribunal or the Commission, as the case may be.

127.1(1) – If, in respect of a person or company whose affairs were the subject of an investigation, the Tribunal,

(a) is satisfied that the person or company has not complied with, or is not complying with, Ontario securities law; or

(b) considers that the person or company has not acted in the public interest,

the Tribunal may, after conducting a hearing, order the person or company to pay the costs of the investigation.

127.1(2) – If, in respect of a person or company whose affairs were the subject of a hearing, the Tribunal, after conducting the hearing,

(a) is satisfied that the person or company has not complied with, or is not complying with, Ontario securities law; or

(b) considers that the person or company has not acted in the public interest,

the Tribunal may order the person or company to pay the costs of or related to the hearing that are incurred by or on behalf of the Commission.

127.1(3) – Where a person or company is guilty of an offence under this Act or the regulations, the Tribunal may, after conducting a hearing, order the person or company to pay the costs of any investigation carried out in respect of that offence.

Application to Court

Securities Act

128(1) – The Commission may apply to the Superior Court of Justice for a declaration that a person or company has not complied with or is not complying with Ontario securities law.

128(2) – The Commission is not required, before making an application under subsection (1), to hold a hearing to determine whether the person or company has not complied with or is not complying with Ontario securities law.

128(3) – If the court makes a declaration under subsection (1), the court may, despite the imposition of any penalty under section 122 and despite any order made under section 127 by the Commission or the Tribunal, make any order that the court considers appropriate against the person or company, including, without limiting the generality of the foregoing, one or more of the following orders:

1. An order that the person or company comply with Ontario securities law.
2. An order requiring the person or company to submit to a review by the Commission of his, her or its practices and procedures and to institute such changes as may be directed by the Commission.
3. An order directing that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, takeover bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,

i. be provided by the person or company to another person or company,

ii. not be provided by the person or company to another person or company, or

iii. be amended by the person or company to the extent that amendment is practicable.

4. An order rescinding any transaction entered into by the person or company relating to trading in securities including the issuance of securities.
5. An order requiring the issuance, cancellation, purchase, exchange or disposition of any securities by the person or company.
6. An order prohibiting the voting or exercise of any other right attaching to securities by the person or company.
7. An order prohibiting the person from acting as officer or director or prohibiting the person or company from acting as promoter of any market participant permanently or for such period as is specified in the order.
8. An order appointing officers and directors in place of or in addition to all or any of the officers and directors of the company then in office.
9. An order directing the person or company to purchase securities of a security holder.
10. An order directing the person or company to repay to a security holder any part of the money paid by the security holder for securities.
11. An order requiring the person or company to produce to the court or an interested person financial statements in the form required by Ontario securities law, or an accounting in such other form as the court may determine.
12. An order directing rectification of the registers or other records of the company.
13. An order requiring the person or company to compensate or make restitution to an aggrieved person or company.
14. An order requiring the person or company to pay general or punitive damages to any other person or company.
15. An order requiring the person or company to disgorge to the Minister any amounts obtained as a result of the non-compliance with Ontario securities law.
16. An order requiring the person or company to rectify any past non-compliance with Ontario securities law to the extent that rectification is practicable.

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act

1 – "misrepresentation" means,

(a) an untrue statement of material fact, or

(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made

130(1) – Where a prospectus, together with any amendment to the prospectus, contains a misrepresentation, a purchaser who purchases a security offered by the prospectus during the period of distribution or during distribution to the public has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against,

(d) the issuer or a selling security holder on whose behalf the distribution is made;

(e) each underwriter of the securities who is required to sign the certificate required by section 59;

(f) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;

(g) every person or company whose consent to disclosure of information in the prospectus has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

(h) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses (a) to (d),

or, where the purchaser purchased the security from a person or company referred to in clause (a) or (b) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against such person, company or underwriter, in which case the purchaser shall have no right of action for damages against such person, company or underwriter.

130(10) – The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

During Distribution – Action for Damages for Misrepresentation in Offering Memorandum

Securities Act

1 – "misrepresentation" means,

(a) an untrue statement of material fact, or

(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made

130.1(1) – Where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, the following rights:

1. The purchaser has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution is made.
2. If the purchaser purchased the security from a person or company referred to in paragraph 1, the purchaser may elect to exercise a right of rescission against the person or company. If the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the person or company.

130.1(7) – The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

130.1(8) – This section applies only with respect to an offering memorandum which has been furnished to a prospective purchaser in connection with a distribution of a security under an exemption from section 53 of the Act that is specified in the regulations for the purposes of this section.

After Distribution – Action for Damages for Misrepresentation

Securities Act

1 – "misrepresentation" means,

(a) an untrue statement of material fact, or

(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made

138.3(1) – Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;
(b) each director of the responsible issuer at the time the document was released;
(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;
(d) each influential person, and each director and officer of an influential person, who knowingly influenced,
(i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and
(e) each expert where,
(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
(iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

138.3(2) – Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;
(b) the person who made the public oral statement;
(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
(d) each influential person, and each director and officer of the influential person, who knowingly influenced,
(i) the person who made the public oral statement to make the public oral statement, or
(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and
(e) each expert where,
(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
(ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
(iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

138.3(3) – Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was

publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
(b) the person who made the public oral statement;
(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
(d) the influential person;
(e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
(f) each expert where,
(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

138.3(4) – Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act or the regulations and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

(a) the responsible issuer;
(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
(c) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

138.3(5) – In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

138.3(6) – In an action under this section,

(a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and
(b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

138.3(7) – In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that

were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

138.4(1) – In an action under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;
(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or
(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

138.4(2) – A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 138.3 in relation to an expert.

138.4(3) – In an action under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;
(b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or
(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

138.4(4) – A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 138.3 in relation to,

(a) a responsible issuer;
(b) an officer of a responsible issuer;
(c) an investment fund manager; or
(d) an officer of an investment fund manager.

138.8 (1) No action may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

(a) the action is being brought in good faith; and
(b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

138.13 – The right of action for damages and the defences to an action under section 138.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Offence of Misleading Disclosure

Securities Act

122(2) – Without limiting the availability of other defences, no person or company is guilty of an offence under section 122(1)(a) or (b) [misleading disclosure] if the person or company did not know and in the exercise of reasonable diligence could not have known that the statement was

misleading or untrue or that it omitted to state a fact that was required to be stated or that was necessary to make the statement not misleading in light of the circumstances in which it was made.

Defences – Misrepresentation in Prospectus

Securities Act

130(2) – No person or company is liable under subsection (1) if he, she or it proves that the purchaser purchased the securities with knowledge of the misrepresentation.

130(3) – No person or company, other than the issuer or selling security holder, is liable under subsection (1) if he, she or it proves,

(a) that the prospectus or the amendment to the prospectus was filed without his, her or its knowledge or consent, and that, on becoming aware of its filing, he, she or it forthwith gave reasonable general notice that it was so filed;

(b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he, she or it withdrew the consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;

(c) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he, she or it had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his, her or its report, opinion or statement as an expert,

    (i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his, her or its report, opinion or statement, or

    (ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his, her or its report, opinion or statement as an expert, he, she or it forthwith advised the Commission and gave reasonable general notice that such use had been made and that he, she or it would not be responsible for that part of the prospectus or the amendment to the prospectus; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he, she or it had reasonable grounds to believe and did believe that the statement was true.

130(4) – No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert unless he, she or it,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
(b) believed there had been a misrepresentation.

130(5) – No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he, she or it,

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
(b) believed there had been a misrepresentation.

130(7) – In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of such damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

130(9) – In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public.

132 – In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of section 130, the standard of reasonableness shall be that required of a prudent person in the circumstances of the particular case.

Defences – Misrepresentation in Offering Memorandum

Securities Act

130.1(2) – No person or company is liable under subsection (1) if he, she or it proves that the purchaser purchased the securities with knowledge of the misrepresentation.

130.1(3) – In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

130.1(5) – Despite subsection (4), an issuer shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation,

(a) was based on information that was previously publicly disclosed by the issuer;
(b) was a misrepresentation at the time of its previous public disclosure; and
(c) was not subsequently publicly corrected or superseded by the issuer prior to the completion of the distribution of the securities being distributed.

130.1(6) – In no case shall the amount recoverable under this section exceed the price at which the securities were offered.

Defences – Liability After Distribution

Securities Act

138.4(5) – A person or company is not liable in an action under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

(a) with knowledge that the document or public oral statement contained a misrepresentation; or
(b) with knowledge of the material change.

138.4(6) – A person or company is not liable in an action under section 138.3 in relation to,

(a) a misrepresentation if that person or company proves that,
(i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or

(b) a failure to make timely disclosure if that person or company proves that,
(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and
(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

138.4(7) – In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including,

(a) the nature of the responsible issuer;
(b) the knowledge, experience and function of the person or company;
(c) the office held, if the person was an officer;
(d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
(e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;
(f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;
(g) the period within which disclosure was required to be made under the applicable law;
(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;
(i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
(j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and
(k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

138.4(8) – A person or company is not liable in an action under section 138.3 in respect of a failure to make timely disclosure if,

(a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3) or the regulations;
(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
(c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;
(d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation; and

(e) where the material change became publicly known in a manner other than the manner required under this Act or the regulations, the responsible issuer promptly disclosed the material change in the manner required under this Act or the regulations.

138.4(9) – A person or company is not liable in an action under section 138.3 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. The document or public oral statement containing the forward-looking information contained, proximate to that information,

i. reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and

ii. a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.

2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

138.4(9.1) – The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement,

(a) made a cautionary statement that the oral statement contains forward-looking information;

(b) stated that,

(i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

(ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(c) stated that additional information about,

(i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

(ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily-available document or in a portion of such a document and has identified that document or that portion of the document.

138.4(9.2) – For the purposes of clause (9.1)(c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available.

138.4(10) – Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or the regulations or forward-looking information in a document released in connection with an initial public offering.

138.4(11) – A person or company, other than an expert, is not liable in an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that,

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and
(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

138.4(12) – An expert is not liable in an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

138.4(13) – A person or company is not liable in an action under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

138.4(14) – A person or company is not liable in an action under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or an exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer;
(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and
(c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

138.4(15) – A person or company, other than the responsible issuer, is not liable in an action under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act or the regulations,

(a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act or the regulations was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

Safe Harbour for Forward-Looking Information

Securities Act

132.1(1) – A person or company is not liable in an action under section 130, 130.1 or 131 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. The document containing the forward-looking information contained, proximate to that information,
    i. reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    ii. a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.
2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

132.1(2) – Subsection (1) does not relieve a person or company of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act

141 – No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for,

(a) any act or omission of the last-mentioned person or company done or omitted in compliance with Ontario securities law; or

(b) any disclosure of information by the last-mentioned person or company to the Commission, to a recognized self-regulatory organization, to a law enforcement agency or to any person or company acting under the authority of the Commission, of the recognized self-regulatory organization or of the law enforcement agency, if the person or company reasonably believed that the information was true and they,
    (i) reasonably believed that the information was related to an offence or to a contravention of Ontario securities law, or
    (ii) provided the information as part of a review, investigation, examination or inspection by the Commission or the recognized self-regulatory organization or as part of a review, investigation, examination or inspection in respect of Ontario securities law by the law enforcement agency.

Limitation Periods

Securities Act

129.1 – Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based.

138 – Unless otherwise provided in this Act, actions to enforce rights under section 130 and 130.1 shall not be commenced more than

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any action, other than an action for rescission, the earlier of,
    (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
    (ii) three years after the date of the transaction that gave rise to the cause of action.

138.14(1) – No action shall be commenced under section 138.3,

(a) in the case of misrepresentation in a document, later than the earlier of,
    (i) three years after the date on which the document containing the misrepresentation was first released, and
    (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of,
    (i) three years after the date on which the public oral statement containing the misrepresentation was made, and
    (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

(c) in the case of a failure to make timely disclosure, later than the earlier of,
    (i) three years after the date on which the requisite disclosure was required to be made, and
    (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

138.14(2) – A limitation period established by subsection (1) in respect of an action is suspended on the date a notice of motion for leave under section 138.8 is filed with the court and resumes running on the date,

(a) the court grants leave or dismisses the motion and,
    (i) all appeals have been exhausted, or
    (ii) the time for an appeal has expired without an appeal being filed; or

(b) the motion is abandoned or discontinued.

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-107

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190801_51-358_reporting-of-climate-change-related-risks.pdf

Credit Unions and Caisses Populaires

What agency, department or authority supervises credit unions and caisses populaires?

Financial Services Regulatory Authority of Ontario (FSRA)

https://www.fsrao.ca/industry/credit-unions-and-caisses-populaires/regulatory-framework/how-ontario-credit-unions-are-regulated#

What statutes govern the creation or licensing of credit unions and caisses populaires in the jurisdiction?

Credit Unions and Caisses Populaires Act, S.O. 2020, c. 36 S. 7
https://www.ontario.ca/laws/statute/20c36

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

97(1) – The board shall manage or supervise the management of the business and affairs of the credit union and shall perform such additional duties as may be imposed under this Act, the regulations or the Authority rules respecting credit unions, or the by-laws of the credit union.
97(2) – The board, a committee of the board or a director shall not directly manage, or be involved in, the day to day activities of the credit union.
105(1) – A credit union must have such officers as are provided for in the Authority rules and may have such additional officers as are provided for in the credit union's by-laws.
105(2) – Subject to this Act, the regulations, the Authority rules and the by-laws of the credit union, the board may establish the duties of the credit union's officers.

Duty of Care and Good Faith

109(1) – Every director, officer and member of a committee shall exercise their powers and discharge their duties honestly, in good faith and in the best interests of the credit union.
109(2) – The director, officer or committee member shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to Adopt Code of Market Conduct

102(1) – The board of every credit union shall adopt a code of market conduct.
102(2) – The board of a credit union shall file a copy of the credit union's code of market conduct, and any amendments to the code, with the Chief Executive Officer.
102(3) – The Chief Executive Officer may direct the board of a credit union to amend the credit union's code of market conduct at any time.
102(4) – If the board of a credit union does not adopt a code of market conduct under subsection (1), the Chief Executive Officer may require that the board adopt a code of market conduct selected by the Chief Executive Officer.
102(5) – A credit union shall comply with its code of market conduct.

Duty of Confidentiality

107(1) – Every director, officer, member of a committee or employee of a credit union shall keep confidential all information received by the credit union or by a subsidiary or other affiliate of the credit union that the director, officer, committee member or employee knows or should know is confidential to the credit union or subsidiary or other affiliate.
107(2) – No director, officer, member of a committee or employee of a credit union shall make use of information referred to in subsection (1) in any transaction in order to obtain, directly or indirectly, a benefit or advantage for any person other than the credit union or a subsidiary or other affiliate of the credit union.
108(1) – Every director, officer, member of a committee or employee of a credit union shall keep confidential all information respecting members of the credit union.
108(2) – Despite subsection (1), information respecting a member may be disclosed with the consent of the member.

108(3) – Despite subsection (1), a director, officer or member of a committee or an employee authorized by the board may disclose information,

(a) to a person acting in a confidential or professional relationship to the credit union, including an employee of a central in which the credit union is a member;
(b) to a financial institution with which the credit union has transactions that may involve confidential matters;
(c) to another credit union with which the credit union of the director, officer, committee member or employee proposes to amalgamate, for the purposes of the amalgamation, if the credit unions have signed letters of intent to enter into an agreement for the amalgamation;
(d) to a person to whom the credit union proposes to sell assets, for the purposes of the sale, if the credit union and the person have signed letters of intent to enter into an agreement of purchase and sale for the sale;
(e) to a credit grantor or to a reporting agency, if the disclosure is for the purpose of determining the creditworthiness of the member;
(f) to the Chief Executive Officer and the Authority; and
(g) to any other person entitled to the information by law.

Duty to Comply With Law

110(1) – Every director, officer, member of a committee and employee of a credit union shall comply with this Act, the regulations, the Authority rules, the by-laws of the credit union and any requirements imposed by the Chief Executive Officer under this Act.
110(2) – No provision in any contract, in any resolution or in the by-laws of a credit union relieves a director, an officer, a committee member or an employee from a duty under this section or relieves that individual from liability for a breach of a duty.

Duty to Disclose in Offering Statement

70(1) – Application for a receipt for an offering statement is made by filing with the Chief Executive Officer a copy of the offering statement and paying the fee established by Authority rule.
70(2) – The offering statement must contain such information as may be prescribed by regulation.
70(3) – The offering statement must provide full, true and plain disclosure of all material facts relating to the securities that the credit union proposes to issue.
70(4) – The offering statement must be accompanied by a disclosure certificate signed by the chair of the board and the chief executive officer of the credit union, certifying that the offering statement satisfies the requirements of subsections (2) and (3).
73 (1) If there is a material change in the facts set out in an offering statement, the credit union shall file with the Chief Executive Officer,

(a) an amendment to the offering statement, if no receipt has been issued for the statement; or
(b) a statement of material change, if a receipt has been issued for the offering statement and the receipt has not been revoked or expired.

73(2) – The credit union shall give the Chief Executive Officer the amendment or statement of material change promptly and, in any event, within ten days after the date on which the material change occurred.
73(3) – The credit union shall give a copy of the amendment or statement of material change to every person to whom it gave a copy of the offering statement.

73(4) – A credit union may, and if requested to do so by the Chief Executive Officer, shall file with the Chief Executive Officer a new offering statement instead of one or more statements of material change.
74 (1) A credit union shall give a copy of an offering statement or statement of material change to each member that requests a copy of one.
74(2) – A person who offers a security in a credit union for sale shall give a copy of the offering statement and statement of material change, if any, to a prospective purchaser upon request and to a purchaser.
74(3) – An agreement of purchase and sale in respect of securities is not binding on the purchaser if the person from whom the purchaser has agreed to purchase the security receives written notice of the purchaser's intention not to be bound by the agreement not later than midnight on the second business day after receipt by the purchaser of the latest offering statement and any statement of material change.
74(4) – Subsection (3) applies with necessary modifications in respect of a person who is subscribing for securities to be issued by a credit union.
74(5) – In subsection (3),
"business day" means a day that is not,
(a) Saturday, or
(b) Sunday or any other holiday, other than Easter Monday and Remembrance Day.

Duty to Comply with Capital and Liquidity Requirements

77(1) – A credit union shall maintain, in relation to its operations, adequate and appropriate forms of capital and liquidity.
77(2) – A credit union shall comply with the Authority rules governing adequate and appropriate forms of capital and liquidity.
82 – A credit union shall provide a report in a form approved by the Chief Executive Officer concerning its compliance with section 77 to such persons and at such times as required by the Chief Executive Officer.
78(1) – A credit union shall establish capital and liquidity policies for the credit union consistent with the Authority rules governing adequate capital and liquidity and the credit union shall adhere to those policies.
78(2) – The capital and liquidity policies of a credit union shall consist of policies, standards and procedures that a reasonable and prudent person would apply in order to ensure the financial soundness of the credit union, avoid undue risk of loss and obtain a reasonable return.
78(3) – The capital and liquidity policies of a credit union are subject to the approval of the board and the board shall review the policies at least once each year.
82.1 – A credit union shall make monthly provision for doubtful loans and establish reserves as required by the Authority rules or the Authority by-laws.

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Representative Actions

42(1) – Subject to subsection (2), a member of a credit union may maintain an action in a court of competent jurisdiction in a representative capacity for the member and all other members of the credit union suing for and on behalf of the credit union to enforce any right, duty or obligation owed to the credit union under this Act or under any other statute or rule of law or equity that could be enforced by the credit union itself, or to obtain damages for any breach of any such right, duty or obligation.

42(2) – An action under subsection (1) shall not be commenced until the member has obtained an order of the court permitting the commencement of the action.
42(3) – A member may, upon at least seven days notice to the credit union, apply to the court for an order referred to in subsection (2).
42(4) – The court may make the order upon such conditions as the court thinks fit if the court is satisfied that,

(a) the member was a member of the credit union at the time of the transaction or other event giving rise to the cause of action;
(b) the member has made reasonable efforts to cause the credit union to commence or prosecute diligently the action on its own behalf; and
(c) the member is acting in good faith and it is apparently in the interests of the credit union or its members that the action be commenced.

42(5) – At any time while an action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the credit union of reasonable interim costs, including legal fees and disbursements.
42(6) – The plaintiff is accountable to the credit union for the interim costs if the action is dismissed on final disposition at the trial or on appeal.
42(7) – An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court.
42(8) – If the court determines that the interests of the members or any class of members may be substantially affected by a discontinuance, settlement or dismissal, the court may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the credit union or any other party to the action as the court directs, to the members or class of members whose interests the court determines may be affected.

Action for Damages for Misrepresentation in Offering Statement

75(1) – If an offering statement or a statement of material change contains a misrepresentation, a purchaser of a security shall be deemed to have relied upon the misrepresentation if it was a misrepresentation when the purchase was made.
75(2) – Subsection (1) does not apply if the purchaser knew about the misrepresentation when purchasing the security.
75(3) – The purchaser has a right of action for damages against,

(a) the credit union;
(b) every person, other than an employee of a credit union, who sells the security on behalf of the credit union;
(c) every director of the credit union at the time the offering statement or statement of material change was filed with the Chief Executive Officer;
(d) every person whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and
(e) every person who signed the offering statement or statement of material change other than the persons included in clauses (a) to (d).

75(4) – If the purchaser purchased the security from a credit union, the purchaser may elect to exercise a right of rescission against the credit union, in which case the purchaser has no right of action for damages against the credit union.

Order to Amend Capital and Liquidity Requirements

78(4) – If the Chief Executive Officer considers the capital and liquidity policies of a credit union to be inadequate or imprudent, the Chief Executive Officer may order the credit union to amend them in accordance with the order.

79(1) – The Chief Executive Officer may order a credit union,

(a) to increase its capital; or

(b) to provide additional liquidity in such forms and amounts as the Chief Executive Officer may require.

79(2) – Despite a credit union's compliance with the Authority rules governing adequate capital and liquidity, the Chief Executive Officer may impose the requirements set out in subsection (1),

(a) if there are reasonable grounds to believe that the credit union is not complying with the requirements of this Act, the regulations and the Authority rules concerning the management of risk in making loans and investments and in the general management of credit union business;

(b) if the Chief Executive Officer considers that imposing the requirement is necessary to protect the interests of members, shareholders or depositors; or

(c) if the Chief Executive Officer considers that imposing the requirement is necessary to ensure the financial security and integrity of the credit union.

79(3) – The credit union shall comply with the order within such time as the Chief Executive Officer specifies in the order.

81 – If the Chief Executive Officer has appraised the value of an asset held by a credit union or a subsidiary and the value determined by the Chief Executive Officer varies materially from the value placed by the credit union or the subsidiary on the asset, the Chief Executive Officer shall send to the credit union, its auditor and its audit committee a written notice of the value of the asset as determined by the Chief Executive Officer.

What section sets out the defenses available to the directors and officers for these alleged breaches?

Defence – Breach of Duty of Care and Good Faith

121(1) – A director, officer, member of a committee or an employee of a credit union has fulfilled their duty under section 110 if they exercised the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance in good faith on,

(a) financial statements of the credit union represented to them by an officer of the credit union or in a written report of the auditor of the credit union fairly to reflect the financial condition of the credit union; or

(b) a report of an accountant, lawyer or other professional person whose profession lends credibility to a statement made by the person.

121(2) – A director, officer or member of a committee of a credit union has fulfilled their duty under section 109 if they relied in good faith on,

(a) financial statements of the credit union represented to them by an officer of the credit union or in a written report of the auditor of the credit union fairly to reflect the financial condition of the credit union; or

(b) a report of an accountant, lawyer or other professional person whose profession lends credibility to a statement made by the person.

Defence – Breach of Duty to Disclose in Offering Statement

75(5) – A person who signed the disclosure certificate required under subsection 70 (4) or a director is not liable under this section if the person proves one of the following:

1. The offering statement or statement of material change was filed with the Chief Executive Officer without the person's knowledge or consent. As soon as the person became aware that it had been filed with the Chief Executive Officer, the person advised the Chief Executive Officer that it was filed with the Chief Executive Officer without the person's knowledge or consent.
2. The person was not aware of the misrepresentation when the offering statement or material change statement was filed with the Chief Executive Officer. After the receipt for the statement was issued but before the purchaser bought the security, the person immediately after the person became aware of the misrepresentation advised the Chief Executive Officer that the person withdrew consent to the filing of the statement with the Chief Executive Officer.
3. The person had no reasonable grounds to believe, and did not believe, that there had been a misrepresentation.

75(6) – In this section,

"misrepresentation" means,

(a) an untrue statement of material fact, or

(b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

Insurance Companies

What agency, department or authority supervises insurance companies?

Financial Services Regulatory Authority of Ontario (FSRA)
https://www.fsrao.ca/about-fsra

What statutes govern the creation or licensing of insurance companies in the jurisdiction?

Insurance Act, R.S.O. 1990, c. I.8
https://www.ontario.ca/laws/statute/90i08

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty Not to Engage in Unfair or Deceptive Act

439 – No person shall engage in any unfair or deceptive act or practice.

Duty to Disclose

101.1 – Every insurer shall provide the Chief Executive Officer or an agency designated by the Chief Executive Officer with information prescribed by the regulations about applications for insurance and claims made to the insurer at such times and subject to such conditions as are prescribed by the regulations.

102(1) – Subject to section 370, every licensed insurer shall,

(a) prepare annually and deliver to the Chief Executive Officer or his or her designate, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended, at the election of the company

in its by-laws, on the 31st day of October or the 31st day of December next preceding the delivery of the statement; and

(b) prepare and deliver to the Chief Executive Officer or his or her designate when required by the Chief Executive Officer, for the prescribed category of insurer, an interim statement for the period specified by the Chief Executive Officer containing such information as the Chief Executive Officer considers necessary to assess the insurer's condition of affairs.

102(2) – A statement of the condition of affairs of an insurer under clause (1)(a) shall be in a form approved by the Chief Executive Officer, and shall set out,

(a) the assets, liabilities, revenues and expenses of the insurer for the year;
(b) particulars of the business done by the insurer in Ontario during the year; and
(c) such other information as the Chief Executive Officer considers necessary to assess an insurer's condition of affairs.

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Gathering Evidence

440(1) – The Chief Executive Officer may examine and investigate the affairs of every person engaged in the business of insurance in Ontario in order to determine whether such person has been, or is, engaged in any unfair or deceptive act or practice.

440(2) – The Chief Executive Officer may examine and investigate the affairs of every person who has been but is no longer engaged in the business of insurance in Ontario in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

440(3) – The Chief Executive Officer may examine and investigate the affairs of every person who holds a service provider's licence issued under Part VI, or who held such a licence, in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

440(4) – The Chief Executive Officer may examine and investigate the affairs of such other persons as may be prescribed, in such circumstances as may be prescribed, in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

440(5) – The Chief Executive Officer may examine and investigate the affairs of every other person who, in the opinion of the Chief Executive Officer, may have engaged in any unfair or deceptive act or practice in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

441(1) – Upon examination or investigation, or upon any other evidence, the Chief Executive Officer shall make a report if he or she is of the opinion that a person has committed or is committing any act, or has pursued or is pursuing any course of conduct, that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice.

441(2) – The Chief Executive Officer may give notice in writing, which shall include a copy of the report made under subsection (1), to the person that the Chief Executive Officer intends to order the person,

(a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Chief Executive Officer;
(b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Chief Executive Officer; or

(c) to perform the acts that, in the opinion of the Chief Executive Officer, are necessary to remedy the situation.

442.1(1) – The Chief Executive Officer or a person designated by the Chief Executive Officer may direct an inquiry to any of the following persons about contracts, settlements or adjustments under contracts, the financial affairs of an insurer, the acts and practices of an insurer, agent or adjuster or such other matters as may be specified by the Chief Executive Officer:

1. An insurer who holds or held a licence under this Act.
2. An insurer who, in the opinion of the Chief Executive Officer, is or was required to hold a licence under this Act.
3. The chief agent of an insurer described in paragraph 1 or 2 that has its head office outside Ontario.
4. An agent or adjuster who holds or held a licence under this Act.
5. An agent or adjuster who, in the opinion of the Chief Executive Officer, is or was required to hold a licence under this Act.
6. A broker who is or was a registered insurance broker under the Registered Insurance Brokers Act.

442.1(3) – The Chief Executive Officer or a person designated by the Chief Executive Officer may direct an inquiry to any other person who, in the opinion of the Chief Executive Officer, may have committed an unfair or deceptive act or practice. The inquiry may be about matters relevant to the purposes of Part XVIII (Unfair or Deceptive Acts or Practices).

442.1(4) – The Chief Executive Officer or a person designated by the Chief Executive Officer may direct an inquiry to any other prescribed person, in such circumstances as may be prescribed, about the prescribed matters.

442.1(5) – A person to whom an inquiry is directed shall answer promptly, explicitly and completely and shall do so in the manner and within the period specified by the Chief Executive Officer or the designate.

442.2(1) – The Chief Executive Officer or a person designated by the Chief Executive Officer may at any reasonable time examine the books, records, information, money, valuables and things of an insurer, agent, adjuster or broker that are related to the business of an insurer, agent, adjuster or broker.

442.3(1) – Upon the request of the Chief Executive Officer or a person designated by the Chief Executive Officer, a person to whom an inquiry may be directed under section 442.1 shall give the Chief Executive Officer or designate full information, and shall provide records, about the following matters:

1. A contract issued by an insurer.
2. A settlement or adjustment under a contract.
3. Activities related to the business of insurance.
4. Activities related to the business of a person who holds or held a licence under this Act.
5. Activities related to the business of any other person who, in the opinion of the Chief Executive Officer, is or was required to hold a licence under this Act.
6. Such other matters as may be prescribed.
7. Such other matters as may be specified by the Chief Executive Officer or the designate

Offences

447(2) – Every person is guilty of an offence who,

(a) directly or indirectly furnishes false, misleading or incomplete information to the Authority whether the information is required under this Act or is volunteered;

(a.1) knowingly makes a false or misleading statement or representation to an insurer in connection with the person's entitlement to a benefit under a contract of insurance;
(a.2) wilfully fails to inform an insurer of a material change in circumstances in connection with the person's entitlement to a benefit under a contract of insurance within 14 days of the material change;
(a.3) knowingly makes a false or misleading statement or representation to an insurer in order to obtain payment for goods or services provided to an insured, whether or not the insured received the goods or services;
(b) fails to comply with any requirement, or any order or direction made, under this Act;
(c) fails to comply with any written undertaking given to the Tribunal or the Chief Executive Officer;
(d) contravenes this Act, the regulations or the Authority rules; or
(e) contravenes any term, condition or restriction imposed by a licence.

447(3) – On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more than $250,000 and on each subsequent conviction to a fine of not more than $500,000.

447(4) – Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,
(a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
(b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than $100,000 and on each subsequent conviction to a fine of not more than $200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

447(5) – Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Order Restraining Contravention

448(1) – If it appears to the Chief Executive Officer that any person has failed to comply with or is not complying with,
(a) any provision of this Act, the regulations or the Authority rules;
(a.1) any order, decision, direction or inquiry made under this Act;
(b) any undertaking given; or
(c) any term, condition or restriction imposed on its licence, where applicable,

the Chief Executive Officer may, in addition to any other rights under this Act, apply to a judge of the Superior Court of Justice for an order directing the person to comply with or restraining the person from violating the provision, order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Suspension of Licence

58(1) – Upon examination, from annual statements, or upon any other evidence, the Chief Executive Officer shall make a report if he or she,
(a) finds, with respect to an insurer incorporated or organized under the laws of Ontario, that the assets of the insurer are insufficient to justify its continuance in business or to provide for its obligations;
(b) is of the opinion that there exists a state of affairs that is or may be prejudicial to the interests of persons who have contracts of insurance with an insurer licensed in Ontario;

(c) finds that an insurer licensed in Ontario has failed to comply with any provision of law or with its Act or instrument of incorporation or association; or
(d) becomes aware that the licence of an insurer licensed in Ontario has been suspended or cancelled by any government in Canada.

58(2) – The Chief Executive Officer may give notice in writing, which shall include a copy of the report made under subsection (1), to the insurer stating that the Chief Executive Officer intends,
(a) to suspend or cancel the insurer's licence; or
(b) to take possession and control of the assets of the insurer if incorporated or organized under the laws of Ontario.

58(8) – At a hearing, if the Tribunal finds that one or more of the circumstances described in clauses (1) (a), (b), (c) and (d) exist, it may,
(a) suspend or cancel the licence of the insurer; or
(b) order the Chief Executive Officer to take possession and control of the assets of the insurer if incorporated or organized under the laws of Ontario.

Administrative Penalties

441.2(1) – An administrative penalty may be imposed under section 441.3 or 441.4 for either of the following purposes:
1. To promote compliance with the requirements established under this Act.
2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under this Act.

441.2(2) – An administrative penalty may be imposed alone or in conjunction with any other regulatory measure provided by this Act, including an order under section 441, or the suspension, revocation or cancellation of a licence.

441.3(1) – If the Chief Executive Officer is satisfied that a person is contravening or not complying with or has contravened or failed to comply with any of the following, the Chief Executive Officer may, by order, impose an administrative penalty on the person in accordance with this section and the regulations:
1. A provision of this Act, the regulations or the Authority rules as may be prescribed.
2. A condition, requirement or obligation described in clause (b), (c) or (d) of the definition of "requirement established under this Act" in section 441.1.

441.3(2) – If the Chief Executive Officer proposes to impose an administrative penalty under this section, the Chief Executive Officer shall give written notice of the proposal to the person, including the details of the contravention or failure to comply, the amount of the penalty and the payment requirements; the Chief Executive Officer shall also inform the person that he, she or it may request a hearing by the Tribunal about the proposal and shall advise the person about the process for requesting a hearing.

441.3(3) – A notice of proposal to impose an administrative penalty under this section may be combined with a notice of proposal authorized by any other section.

441.5(1) – An administrative penalty imposed under section 441.3 shall not exceed the following amounts:
1. For a contravention or failure to comply by a person, other than an individual, $200,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act.
2. For a contravention or failure to comply by an individual, $100,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act.

441.6(1) – If a person fails to pay an administrative penalty imposed under section 441.3 or 441.4 in accordance with the terms of the order imposing the penalty, the Chief Executive

Officer may file the order with the Superior Court of Justice and the order may be enforced as if it were an order of the court.

What section sets out the defenses available to the directors and officers for these alleged breaches?

Protected Disclosure

446 – A person who in good faith makes an oral or written statement or disclosure to the Tribunal, the Chief Executive Officer, an employee of the Authority or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

Limitation Period

449 – No proceeding for an offence under this Act may be commenced more than two years after the date on which the facts upon which the proceedings are based first came to the knowledge of the Chief Executive Officer.

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Financial Services Regulatory Authority of Ontario
https://www.fsrao.ca/

What statute governs the creation of employment-based pension plans in the jurisdiction?

Pension Benefits Act, R.S.O. 1990, c. P.8
https://www.ontario.ca/laws/statute/90p08

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Provisions imposing such duties are found in the *Pension Benefits Act,* as well as the following regulation established under the *Pension Benefits Act*:

- R.R.O. 1990, Regulation 909
  https://www.ontario.ca/laws/regulation/900909

Duty of Care

Pension Benefits Act

19(1) – The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act, the regulations and the Authority rules.
22(1) – The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.
22(2) – The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

22(3) – Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.
22(7) – An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.
22(8) – An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Duty to Establish Statement of Investment Policies and Procedures

Regulation 909

78(1) – The administrator of a pension plan shall establish a statement of investment policies and procedures for the plan that meets the requirements of the federal investment regulations as modified in sections 47.8 and 79 of this Regulation.
78(2) – The federal investment regulations, as modified in sections 47.8 and 79 of this Regulation, apply with respect to the statement of investment policies and procedures for the plan.
78(3) – The statement of investment policies and procedures shall include information as to whether environmental, social and governance factors are incorporated into the plan's investment policies and procedures and, if so, how those factors are incorporated.
78(4) – The administrator of a pension plan that is registered before January 1, 2016 shall file a statement of investment policies and procedures within 60 days after January 1, 2016.
78(5) – The administrator of a pension plan that is registered on or after January 1, 2016 shall file a statement of investment policies and procedures within 60 days after the pension plan is registered.
78(6) – The administrator of a pension plan shall file an amendment to the statement of investment policies and procedures within 60 days after the date the amendment is made.
78(7) – The statement of investment policies and procedures shall include the plan's target asset allocation for assets in respect of defined benefits for each investment category listed in subsection 76 (12).
78(7.1) – Subsection (7) does not apply with respect to a jointly sponsored pension plan listed in subsection 1.3.1 (3).
78(8) – The target asset allocation for an investment category is the target proportion of the plan's assets invested in a particular investment category in proportion to the total target investment in all investment categories, expressed as a percentage.
78.1 – Despite section 78, the administrator of a pension plan is not required to establish a statement of investment policies and procedures for the plan where all the pension benefits provided under the plan are defined contribution benefits and the investments are directed entirely by the members.
79(1) – The assets of every pension plan shall be invested in accordance with the federal investment regulations, as modified in section 47.8 of this Regulation and subsection (2), and in accordance with the statement of investment policies and procedures for the plan.
79(1.1) – In the event of a conflict, the federal investment regulations, as modified in section 47.8 of this Regulation and subsection (2), prevail to the extent of the conflict over the statement of investment policies and procedures for the plan, the provisions of the plan or an instrument governing the plan.

79(2) – Despite subsection (1), investments in the following securities are excluded from the restriction set out in subsection 9(1) of Schedule III of the federal investment regulations:

1. Securities issued by the Government of the United States of America

Duty to Notify of Proposed Amendments

Pension Benefits Act

26(1) – If the administrator of a pension plan applies for registration of an amendment to the pension plan that would result in a reduction of pension benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund, the Chief Executive Officer shall require the administrator to transmit to such persons as the Chief Executive Officer may specify a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Chief Executive Officer, and the administrator shall provide to the Chief Executive Officer a copy of the notice and shall certify to the Chief Executive Officer the date on which the last such notice was transmitted.

26(3) – Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, former member or other person entitled to payment from the pension fund who is affected by the amendment.

26(5) – Where a proposed amendment affects members or former members represented by a trade union that is a party to a collective agreement filed as a document that creates or supports a pension plan, the administrator shall transmit to the trade union the written notice mentioned in subsection (1).

26(6) – This section does not apply with respect to an amendment that relates to a transfer of assets under section 80.4 from a single employer pension plan to a jointly sponsored pension plan.

26(7) – Subsection (1) does not apply with respect to an amendment that relates to the conversion under section 81.0.1 of a single employer pension plan into a jointly sponsored pension plan.

Duty to Provide Statement of Benefits

Pension Benefits Act

27(1) – The administrator of a pension plan shall give to each member annually, within the prescribed period, a written statement containing the prescribed information about the pension plan, the member's pension benefits and any ancillary benefits.

27(2) – The administrator of a pension plan shall give to each former member and retired member, within the prescribed period, a written statement containing the prescribed information about the pension plan or about the member's pension benefits and any ancillary benefits

28(1) – The administrator of a pension plan shall give to each member who terminates employment with the employer or otherwise ceases to be a member, or to any other person who as a result becomes entitled to a payment under the pension plan, within the prescribed period, a written statement containing the prescribed information about the benefits, rights and obligations of the member or person.

Duty to Make Records Available

Pension Benefits Act

29(1) – On written request, the administrator of a pension plan shall make available the prescribed records about the pension plan and the pension fund for inspection without charge by,

(a) a member, former member or retired member;
(b) the spouse of a member, former member or retired member;
(c) Repealed: 2010, c. 9, s. 17 (2).
(c.1) a former spouse, within the meaning of section 67.1, of a member, former member or retired member but only in such circumstances and for such purposes as may be prescribed;
(d) any other person entitled to pension benefits under the pension plan;
(e) Repealed: 1999, c. 15, s. 3 (1).
(f) a representative of a trade union that represents members of the pension plan;
(g) an employer;
(h) a person required to make contributions under the pension plan on behalf of an employer;
(i) an agent of a person described in any of clauses (a) to (h) who is authorized in writing; or
(j) such other persons as may be prescribed.

29(2) – The administrator shall make the prescribed records available,

(a) at the premises of the employer where the member is employed or where the former member or retired member was employed, as the case may be; or
(b) at a location that is agreed upon by the administrator and the person making the request.

29(3) – A person described in clause (1) (a), (b) or (d), or the person's agent is entitled to make an inspection under subsection (1) not more than once in a calendar year.

29(4) – The administrator shall permit the person making the inspection to make extracts from, or to copy, the prescribed records and, upon request, the administrator shall give the person a copy of any of the prescribed records upon payment of the applicable fee to the administrator.

29(5) – If the administrator receives a written request from a person described in subsection (1) and receives payment of the applicable fee, the administrator shall provide prescribed records by mail or electronically to the person in such circumstances as may be prescribed.

29(6) – A person described in clause (1) (a), (b) or (d), or the person's agent is entitled to make a request under subsection (5) for a particular prescribed record not more than once in a calendar year.

29(7) – The applicable fee referred to in subsection (4) or (5) cannot exceed such amount as may be prescribed.

30(1) – The administrator of a pension plan and the persons described in subsection 29 (1) are entitled to inspect the following records at the office of the Chief Executive Officer during the business hours of that office:

1. The filed documents that create and support the pension plan and the pension fund.
2. Such other prescribed documents as are filed in respect of the pension plan and the pension fund.

30(2) – Upon payment of the applicable fee, the Chief Executive Officer shall give the person making an inspection under subsection (1) a copy of any record that the person is entitled to inspect.

30(3) – If the Chief Executive Officer receives a written request from the administrator or from a person described in subsection 29 (1) and receives payment of the applicable fee, the Chief Executive Officer shall provide prescribed records by mail or electronically to the administrator or other person in such circumstances as may be prescribed.

Duty to Ensure Contributions Paid

Pension Benefits Act

56(1) – The administrator of a pension plan and the agent, if any, of the administrator who is responsible for receiving contributions under the pension plan shall ensure that all contributions are paid when due.

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Administrative Penalties

Pension Benefits Act

108.1(1) – For the purposes of sections 108.2 to 108.4,
"requirement established under this Act" means,

(a) a requirement imposed by a provision of this Act that is prescribed for the purpose of section 108.2 or 108.3 or by a provision of a regulation that is prescribed for the purpose of either of those sections,
(b) a requirement imposed by order, or
(c) an obligation assumed by way of undertaking.

108.2(1) – If the Chief Executive Officer is satisfied that a person is contravening or not complying with or has contravened or failed to comply with any of the following, the Chief Executive Officer may, by order, impose an administrative penalty on the person in accordance with this section and the regulations:

1. A provision of this Act or the regulations as may be prescribed.
2. A requirement or obligation described in clause (b) or (c) of the definition of "requirement established under this Act" in subsection 108.1 (1).

108.2(2) – If the Chief Executive Officer intends to impose an administrative penalty under this section, the Chief Executive Officer shall give written notice of the intended decision to the person, including the details of the contravention or failure to comply, the amount of the penalty and the payment requirements; the Chief Executive Officer shall also inform the person that the person may request a hearing by the Tribunal about the intended decision and shall advise the person about the process for requesting a hearing.
108.2(3) – A notice of the intended decision to impose an administrative penalty under this section may be combined with a notice of the intended decision authorized by any other section.
108.2(5) – If the person requests a hearing in writing within 15 days after the notice under subsection (2) is given, the Tribunal shall hold a hearing.
108.2(6) – Subject to the regulations, the Tribunal may, by order, direct the Chief Executive Officer to make the intended decision indicated in the notice, with or without changes, or substitute its opinion for that of the Chief Executive Officer.
108.2(7) – If the person does not request a hearing or does not make the request in accordance with subsection (5), the Chief Executive Officer may make the intended decision indicated in the notice.
108.2(8) – If the person pays the administrative penalty in accordance with the terms of the order or, if the order is varied, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Act in respect of the same contravention or failure to comply.

Summary Administrative Penalties

Pension Benefits Act

108.3(1) – If the Chief Executive Officer is satisfied that a person is contravening or not complying with or has contravened or failed to comply with a provision of this Act or the regulations as may be prescribed, the Chief Executive Officer may, by order, impose an administrative penalty on the person in accordance with this section and the regulations.
108.3(2) – Before imposing a penalty, the Chief Executive Officer shall give the person a reasonable opportunity to make written submissions.
108.3(4) – The person may appeal the Chief Executive Officer's order to the Tribunal in writing within 15 days after the order in subsection (1) is given to the person.
108.3(5) – An appeal commenced in accordance with subsection (4) operates as a stay of the order until the matter is finally disposed of.
108.3(6) – The Tribunal may confirm, revoke or vary the order within the limits, if any, established by the regulations.
108.3(7) – If the person pays the administrative penalty in accordance with the terms of the order or, if the order is varied, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Act in respect of the same contravention or failure to comply.

General Rules for Administrative Penalties

Pension Benefits Act

108.4 – An administrative penalty imposed under section 108.2 or 108.3 shall not exceed the following amounts:

1. For a contravention or failure to comply by a person, other than an individual, $25,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act.
2. For a contravention or failure to comply by an individual, $10,000 or such lesser amount as may be prescribed for a prescribed requirement established under this Act.

108.5(1) – If a person fails to pay an administrative penalty imposed under section 108.2 or 108.3 in accordance with the terms of the order imposing the penalty, the Chief Executive Officer may file the order with the Superior Court of Justice and the order may be enforced as if it were an order of the court.

Offences

Pension Benefits Act

109(1) – Every person who contravenes this Act, the regulations or the Authority rules is guilty of an offence.
109(2) – Every person who contravenes an order made under this Act is guilty of an offence.
110(1) – Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than $100,000 for the first conviction and not more than $200,000 for each subsequent conviction.
110(2) – Every director, officer, official or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association is guilty of an offence if the person,

(a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in section 109 by the corporation or unincorporated association; or
(b) fails to take all reasonable care in the circumstances to prevent the corporation or unincorporated association from committing an offence referred to in section 109.

110(3) – A person who is guilty of an offence described in subsection (2) is liable on a first conviction to a fine of not more than $100,000, and on each subsequent conviction to a fine of

not more than $200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of an offence arising from the same facts or circumstances.
110(4) – Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company.
110(5) – An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court.

Order Restraining Contravention

Pension Benefits Act

111 – Where a provision of this Act or the regulations or an order, approval or consent of the Chief Executive Officer under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the administrator of the pension plan affected by the contravention.

What section sets out the defenses available to those individuals who allegedly breached those duties?

Limitation Periods

Pension Benefits Act

108.2(4) – The Chief Executive Officer shall not give notice of the intended decision more than five years after the date when the contravention or failure to comply occurred or is alleged to have occurred.
108.3(3) – The Chief Executive Officer shall not make an order under section 108.3 more than five years after the date when the contravention or failure to comply occurred or is alleged to have occurred.
110(6) – No prosecution for an offence under this Act shall be commenced after five years after the date when the offence occurred or is alleged to have occurred.

Alberta

Corporate Law

What department of the government has oversight of the corporation statute?

Service Alberta
https://www.alberta.ca/service-alberta

What statute governs the incorporation of business corporations in the jurisdiction?

Business Corporations Act, RSA 2000, c. B-9
https://kings-printer.alberta.ca/1266.cfm?page=B09.cfm&leg_type=Acts&isbncln=9780779845743

What sections impose duties on the corporation's directors and officers?

Duty to Manage

101(1) – Subject to any unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation.

Duty of Care and Good Faith

122(1) – Every director and officer of a corporation in exercising the director's or officer's powers and discharging the director's or officer's duties to the corporation 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.

122(4) – In determining whether a particular transaction or course of action is in the best interests of the corporation, a director, if the director is elected or appointed by the holders of a class or series of shares or by employees or creditors or a class of employees or creditors, may give special, but not exclusive, consideration to the interests of those who elected or appointed the director.

Duty to Comply with Law

122(2) – Every director and officer of a corporation shall comply with this Act, the regulations, articles, bylaws and any unanimous shareholder agreement.

122(3) – Subject to section 146(7), no provision in a contract, the articles, the bylaws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves the director or officer from liability for a breach of that duty.

Duty to Keep Accurate Records and Make Available for Inspection

21(1) – A corporation shall prepare and maintain records containing

(a) the articles and the bylaws, all amendments to the articles and bylaws, a copy of any unanimous shareholder agreement and any amendment to a unanimous shareholder agreement,
(b) minutes of meetings and resolutions of shareholders,
(c) copies of all notices required by section 106 or 113,
(d) a securities register complying with section 49,
(e) copies of the financial statements, reports and information referred to in section 155(1), and
(f) a register of disclosures made pursuant to section 120.

21(5) – In addition to the records described in subsection (1), a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of the directors.

Duty to Prepare, Approve, and Provide Financial Statements

155(1) – Subject to section 156, the directors of a corporation shall place before the shareholders at every annual meeting

(a) the following financial statements as prescribed:
    (i) if the corporation has not completed a financial period and the meeting is held after the end of the first 6-month period of that financial period, a financial statement for the period that began on the date the corporation came into existence and ended on a date occurring not earlier than 6 months before the annual meeting;
    (ii) if the corporation has completed only one financial period, a financial statement for that year;
    (iii) if the corporation has completed 2 or more financial periods, comparative financial statements for the last 2 completed financial periods;

(iv) if the corporation has completed one or more financial periods but the annual meeting is held after 6 months has expired in its current financial period, a financial statement for the period that

(A) began at the commencement of its current financial period, and

(B) ended on a date that occurred not earlier than 6 months before the annual meeting,

in addition to any statements required under subclause (ii) or (iii),

(b) the report of the auditor, if any, and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the bylaws or any unanimous shareholder agreement.

156(1) – Section 155 does not apply to a corporation that is subject to and complies with the provisions of the Securities Act relating to the financial statements to be placed before the shareholders at every annual meeting.

156(2) – A reporting issuer may apply to the Commission for an order authorizing the corporation to omit from its financial statements any item prescribed, or to dispense with the publication of any financial statement prescribed, and the Commission may, if it reasonably believes that the disclosure of the item or statement would be detrimental to the corporation, make the order on any reasonable conditions it thinks fit.

156(3) – The shareholders of the corporation may at any time, by unanimous resolution, waive their right to receive financial statements under section 155(1)(a)(i).

157(1) – A corporation shall keep at its records office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

157(2) – Shareholders of a corporation and their agents and legal representatives may on request examine the statements referred to in subsection (1) during the usual business hours of the corporation, and may make extracts from them, free of charge.

157(3) – A corporation may, within 15 days after a request to examine under subsection (2), apply to the Court for an order barring the right of any person to so examine, and the Court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar that right and make any further order it thinks fit.

157(4) – A corporation shall give notice of an application under subsection (3) to the person making a request under subsection (2), and that person may appear and be heard in person or by counsel.

158(1) – The directors of a corporation shall approve the financial statements referred to in section 155 and indicate that approval by the signature of one or more directors on the statements.

158(2) – A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 155 unless the financial statements are

(a) approved and signed in accordance with subsection (1), and

(b) accompanied with the report of the auditor of the corporation, if any.

159(1) – A corporation shall, not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under section 141(2) instead of the annual meeting, send a copy of the documents referred to in section 155 to each shareholder, except to a shareholder who has informed the corporation in writing that the shareholder does not want a copy of those documents.

159(2) – A corporation that, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than $5000.

159(3) – Notwithstanding subsection (1), the shareholders may, by unanimous resolution, waive their right to receive copies of documents referred to in section 155 in advance of the annual meeting.

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

Gathering Evidence

23(1) – The directors and shareholders of a corporation, their agents and legal representatives may examine the records referred to in section 21(1) during the usual business hours of the corporation free of charge.
23(2) – A shareholder of a corporation is entitled on request and without charge to one copy of the articles and bylaws and of any unanimous shareholder agreement, and amendments to them.
23(3) – Creditors of a corporation and their agents and legal representatives may examine the records referred to in section 21(1)(a), (c) and (d), other than a unanimous shareholder agreement or an amendment to a unanimous shareholder agreement, during the usual business hours of the corporation on payment of a reasonable fee and may make copies of those records.
23(4) – Any person may examine the records referred to in section 21(1)(c) and (d) during the usual business hours of the corporation on payment of a reasonable fee and may make copies of those records.
23(5) – If the corporation is a reporting issuer, any person, on payment of a reasonable fee and on sending to the corporation or its agent the statutory declaration referred to in subsection (9), may on application require the corporation or its agent to furnish within 10 days from the receipt of the statutory declaration a list, referred to in this section as the "basic list", made up to a date not more than 10 days before the date of receipt of the statutory declaration setting out

(a) the names of the shareholders of the corporation,
(b) the number of shares owned by each shareholder, and
(c) the address of each shareholder,

as shown on the records of the corporation.
23(6) – A person requiring a corporation to supply a basic list may, if the person states in the statutory declaration referred to in subsection (5) that the person requires supplemental lists, require the corporation or its agent on payment of a reasonable fee to furnish supplemental lists setting out any changes from the basic list in the information provided in it for each business day following the date the basic list is made up to.
23(7) – The corporation or its agent shall furnish a supplemental list required under subsection (6)

(a) on the date the basic list is furnished, if the information relates to changes that took place prior to that date, and
(b) on the business day following the day to which the supplemental list relates, if the information relates to changes that take place on or after the date the basic list is furnished.

23(8) – A person requiring a corporation to supply a basic list or a supplemental list may also require the corporation to include in that list the name and address of any known holder of an option or right to acquire shares in the corporation.
23(9) – The statutory declaration required under subsection (5) shall state

(a) the name and address of the applicant,

(b) the name and address for service of the body corporate if the applicant is a body corporate, and
(c) that the basic list and any supplemental lists obtained pursuant to subsection (6) will not be used except as permitted under subsection (11).

23(10) – If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

23(11) – A list of shareholders obtained under this section must not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the corporation,
(b) an offer to acquire shares of the corporation, or
(c) any other matter relating to the affairs of the corporation.

Derivative Action

240(1) – Subject to subsection (2), a complainant may apply to the Court for permission to
(a) bring an action in the name and on behalf of a corporation or any of its subsidiaries, or
(b) intervene in an action to which a corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation or subsidiary.

240(2) – No permission may be granted under subsection (1) unless the Court is satisfied that
(a) the complainant has given reasonable notice to the directors of the corporation or its subsidiary of the complainant's intention to apply to the Court under subsection (1) if the directors of the corporation or its subsidiary do not bring, diligently prosecute, defend or discontinue the action,
(b) the complainant is acting in good faith, and
(c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

240(3) – Notwithstanding subsection (2), when all the directors of the corporation or its subsidiary have been named as defendants, notice to the directors under subsection (2)(a) of the complainant's intention to apply to the Court is not required.

241 – In connection with an action brought or intervened in under section 240 or 242(3)(q), the Court may at any time make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:
(a) an order authorizing the complainant or any other person to control the conduct of the action;
(b) an order giving directions for the conduct of the action;
(c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary;
(d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Oppression Remedy

242(1) – A complainant may apply to the Court for an order under this section.

242(2) – If, on an application under subsection (1), the Court is satisfied that in respect of a corporation or any of its affiliates
(a) any act or omission of the corporation or any of its affiliates effects a result,
(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the Court may make an order to rectify the matters complained of.

242(3) – In connection with an application under this section, the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

(a) an order restraining the conduct complained of;
(b) an order appointing a receiver or receiver-manager;
(c) an order to regulate a corporation's affairs by amending the articles or bylaws;

(d) an order declaring that any amendment made to the articles or bylaws pursuant to clause (c) operates notwithstanding any unanimous shareholder agreement made before or after the date of the order, until the Court otherwise orders;
(e) an order directing an issue or exchange of securities;
(f) an order appointing directors in place of or in addition to all or any of the directors then in office;
(g) an order directing a corporation, subject to section 34(2), or any other person, to purchase securities of a security holder;
(h) an order directing a corporation or any other person to pay to a security holder any part of the money paid by the security holder for securities;
(i) an order directing a corporation, subject to section 43, to pay a dividend to its shareholders or a class of its shareholders;
(j) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
(k) an order requiring a corporation, within a time specified by the Court, to produce to the Court or an interested person financial statements in the form required by section 155 or an accounting in any other form the Court may determine;
(l) an order compensating an aggrieved person;
(m) an order directing rectification of the registers or other records of a corporation under section 244;
(n) an order for the liquidation and dissolution of the corporation;
(o) an order directing an investigation under Part 18 to be made;
(p) an order requiring the trial of any issue;
(q) an order granting permission to the applicant to
    (i) bring an action in the name and on behalf of the corporation or any of its subsidiaries, or
    (ii) intervene in an action to which the corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing an action on behalf of the corporation or any of its subsidiaries.

242(4) – This section does not confer on the Court power to revoke a certificate of amalgamation.

242(5) – If an order made under this section directs an amendment of the articles or bylaws of a corporation, no other amendment to the articles or bylaws may be made without the consent of the Court, until the Court otherwise orders.

242(6) – If an order made under this section directs an amendment of the articles of a corporation, the directors shall send articles of reorganization in the form required by the

Registrar to the Registrar together with the documents required by sections 20 and 113, if applicable.

242(7) – A shareholder is not entitled to dissent under section 191 if an amendment to the articles is effected under this section.

242(8) – An applicant under this section may apply in the alternative under section 215(1)(a) for an order for the liquidation and dissolution of the corporation.

General Rules When Applying for Remedy

253(3) – No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

243(1) – An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or may be approved by the shareholders of the corporation or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 215, 241 or 242.

243(2) – An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on any terms the Court thinks fit and, if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

243(3) – A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

243(4) – In an application made or an action brought or intervened in under this Part, the Court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.

248 – If a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation contravenes this Act, the regulations, the articles or bylaws or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right the complainant or creditor has, apply to the Court for an order directing that person to comply with, or restraining that person from contravening any of those things, and on the application the Court may so order and make any further order it thinks fit.

250 – An appeal lies from an order of the Court of Justice under section 253(1) to the Court of King's Bench.

Offence of Failure to Keep Accurate Records and Make Available for Inspection

21(9) – A corporation that, without reasonable cause, contravenes this section [maintenance of records] is guilty of an offence and liable to a fine not exceeding $5000.

23(12) – A person who, without reasonable cause, contravenes this section [allowing inspection of records] is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months or to both.

Offence of Failure to Provide Financial Statements

159(2) – A corporation that, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than $5000.

Offence of Misrepresentation

251(1) – A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar, the Executive Director or any other person or filed with the Executive Director that

(a) contains an untrue statement of a material fact, or

(b) omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months or to both.

251(2) – If a body corporate contravenes subsection (1), then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention of subsection (1) is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months or to both.

Offence of Non-Compliance

252 – Every person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided is guilty of an offence and liable to

(a) in the case of a body corporate, a fine of not more than $1000, and

(b) in the case of an individual, a fine of not more than $1000 or to imprisonment for a term of not more than one month or to both.

Order for Compliance

253(1) – If a person is found guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been found guilty.

What sections set out the defenses officers and directors may assert against alleged violations of those duties?

Defence – Breach of Duty of Care and Good Faith

123(3) – A director is not liable under section 118, and has complied with the director's duties under section 122, if the director exercises the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance in good faith on

(a) financial statements or interim financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation, or

(b) an opinion or report of a person, including a lawyer, accountant, engineer, appraiser or employee of the corporation, whose profession or expertise lends credibility to a statement made by that person.

Defence – Offence of Failure to Keep Accurate Records and Make Available for Inspection

21(9) – A corporation that contravenes this section [maintenance of records] is not guilty of an offence if they had reasonable cause for the contravention.

23(12) – A person who contravenes this section [allowing inspection of records] is not guilty of an offence if they had reasonable cause for the contravention.

Defence – Offence of Failure to Provide Financial Statements

159(2) – A corporation that contravenes this section [providing copies of financial statements to shareholders] is not guilty of an offence if they had reasonable cause for the contravention.

Defence – Offence of Misrepresentation

251(3) – No person is guilty of an offence under subsection (1) or (2) [misrepresentation] if the untrue statement or omission was unknown to the person and in the exercise of reasonable diligence could not have been known to the person.

Defence – Offence of Non-Compliance

252 – A person who contravenes a provision of the Act for which a specific penalty is not provided is not guilty of an offence if they had reasonable cause for the contravention.

Indemnification for Costs

124(1) – Except in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, a corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor, and the director's or officer's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the director or officer in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the director or officer is involved by reason of being or having been a director or officer of that corporation or body corporate, if

(a) the director or officer acted honestly and in good faith with a view to the best interests of the corporation, and
(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director or officer had reasonable grounds for believing that the director's or officer's conduct was lawful.

124(2) – A corporation may with the approval of the Court indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which the person is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by the person in connection with the action if the person fulfils the conditions set out in subsection (1)(a) and (b).

124(3) – Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal, administrative, investigative or other action or proceeding in which the person is involved by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity

(a) was not judged by a court or competent authority to have committed any fault or omitted to do anything that the person ought to have done, and
(b) fulfils the conditions set out in subsection (1)(a) and (b).

124(3.1) – A corporation may advance funds to a person in order to defray the costs, charges and expenses of a proceeding referred to in subsection (1) or (2), but if the person does not meet the conditions of subsection (3) the person shall repay the funds advanced.

Limitation Periods

253(2) – A prosecution for an offence under this Act may be instituted at any time within 2 years from the time when the subject-matter of the complaint arose, but not thereafter.

Securities Law

What commission or department is responsible for securities law?

Alberta Securities Commission
https://www.asc.ca/

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

Securities Act
https://kings-printer.alberta.ca/1266.cfm?page=S04.cfm&leg_type=Acts&isbncln=9780779755400

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://www.asc.ca/-/media/ASC-Documents-part-1/Regulatory-Instruments/2023/09/6103153--51-102-NI-Consolidation-Eff-June-9-2023.ashx
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://www.asc.ca/-/media/ASC-Documents-part-1/Regulatory-Instruments/2023/09/6102904-51-101-NI-Consolidation-Eff-June-9-2023.ashx

Prospectus

Securities Act

113(1) – A prospectus shall

(a) provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued or distributed, and

(b) comply with the requirements of Alberta securities laws.

113(2) – A prospectus shall contain or be accompanied with financial statements, reports or other documents in accordance with Alberta securities laws.

Prescribed Disclosure

Securities Act

146 – A reporting issuer shall, in accordance with the regulations,

(a) provide prescribed periodic disclosure about its business and affairs,
(b) provide disclosure of a material change, and
(c) provide other prescribed disclosure.

Financial Statements

National Instrument 51-102

4.1(1) – A reporting issuer must file annual financial statements that include

(a) A statement of comprehensive income, changes in equity, and a statement of cash flows for
    i. The most recently completed financial year
    ii. The financial year immediately preceding the most recently completed financial year, if any
(b) A statement of financial position as at the end of each of those periods

4.1(2) – Annual financial statements must be audited.

4.2 – The filing deadline for audited annual financial statements is
(a) For non-venture issuers, the 90th day after the end of its most recently completed financial year.
(b) For venture issuers, the 120th day after the end of its most recently completed financial year.

4.5(1) – The annual financial statements must be approved by the board of directors before filing.

4.3(1) – A reporting issuer must file an interim financial report for each interim period ended after it became a reporting issuer.

1 – "Interim period" = a period commencing on the first day of the financial year and ending 9, 6, or 3 months before the end of the financial year

4.3(3) – If an auditor has not performed a review of an interim financial report, the report must be accompanied by a notice indicating that it has not been reviewed by an auditor.

4.4 – The filing deadline for interim financial reports is
(a) For non-venture issuers, the 45th day after the end of the interim period
(b) For venture issuers, the 60th day after the end of the interim period

4.5(1) – The interim financial report must be approved by the board of directors before filing.

Management's Discussion & Analysis

National Instrument 51-102

5.1(1) – A reporting issuer must file Management's Discussion & Analysis relating to its annual financial statements and each interim financial report required under Part 4.

5.1(2) – The filing deadline is on or before the earlier of the filing deadline or the actual filing of the annual or interim financial statements, as applicable.

5.4(1) – Issuer must disclose in its annual Management's Discussion & Analysis the designation and number of each class of voting or equity securities (or securities convertible to voting/equity securities) for which there are securities outstanding

5.5(1) – The annual and interim Management's Discussion & Analysis must be approved by the board of directors before being filed.

5.8(2) – A reporting issuer must discuss in its Management's Discussion & Analysis any updates to FLI – events and circumstances likely to cause actual results to differ materially from material FLI relating to a period that is not yet complete that the issuer previously disclosed to the public.

5.8(3) – Sub (2) does not apply if the reporting issuer included the information in a news release and discloses in the Management's Discussion & Analysis that the news release is available on SEDAR.

5.8(4) – Issuer must discuss in its Management's Discussion & Analysis material differences between (a) actual results for the annual or interim period to which the Management's Discussion & Analysis relates, and (b) any previously disclosed FOFI or financial outlook for that period.

Annual Information Form

National Instrument 51-102

6.1 – A reporting issuer that is not a venture issuer must file an Annual Information Form.
6.2 – Filing deadline is on or before the 90th day after the end of the issuer's most recently completed financial year.

Material Changes

National Instrument 51-102

1.2 – "Material change" means

(c) a change in the business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer, or

(d) A decision to implement a change made by the board or persons acting in a similar capacity or senior management who believe that confirmation of the board or persons acting in similar capacity is probable.

7.1(1) – If a material change occurs in the affairs of a reporting issuer, the issuer must:

(c) Immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change

(d) As soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.

7.1(2) – Reporting issuer may mark filed material change report as confidential, with written reasons for non-disclosure, if:

(c) In the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by sub (1) would be unduly detrimental to the interests of the reporting issuer, or

(d) The material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer.

7.1(5) – If a report has been filed under sub (2), the issuer must advise the regulator in writing every 10 days if it believes the report should continue to remain confidential, until the material change is generally disclosed OR the board rejects the decision.

7.1(7) – An issuer must promptly generally disclose the material change if the issuer becomes aware of reasonable grounds to believe that persons are selling securities of the reporting issuer with knowledge of the change.

Making Filings Available

Securities Act

221(1) – Where Alberta securities laws require that material be filed

(a) with the Commission, the filing shall be effected by providing the material or causing it to be provided to the Secretary, unless the Commission advises or orders otherwise, or

(b) with the Executive Director, the filing shall be effected by providing the material or causing it to be provided to the Executive Director.

221(2) – Where Alberta securities laws

(a) require that material be filed, and

(b) do not specify as to where or with whom the material is to be filed,

the filing shall be effected by depositing the material or causing it to be deposited with the Executive Director unless the Commission advises or orders otherwise.

221(3) – Subject to subsections (4) and (5), all material filed under subsection (1) or (2) shall be made available for public inspection at the Commission offices during the normal business hours of the Commission.

221(4) – With respect to any material provided to or obtained by

(a) the Commission, the Commission may hold the material in confidence if the Commission considers that it would not be prejudicial to the public interest to do so, or

(b) the Executive Director, the Executive Director may hold the material in confidence if the Executive Director considers that it would not be prejudicial to the public interest to do so,

and the Commission or the Executive Director, as the case may be, may do so whether or not that material was required to be filed, submitted or otherwise provided.

221(5) – The Commission may,

(a) on the application of an interested person or company or the Executive Director, and

(b) on giving the interested person or company and the Executive Director the opportunity to be heard,

make an order directing that any material or class of material provided to or obtained by the Commission or the Executive Director, be held in confidence if the Commission considers that it would not be prejudicial to the public interest to grant the order, and the Commission may do so whether or not that material was required to be filed, submitted or otherwise provided.

221(6) – Where the Executive Director decides to hold material in confidence or not to hold material in confidence, an interested person or company may appeal the decision to the Commission.

221(7) – Any decision of the Commission made pursuant to subsection (4) or (5), and any decision made by the Commission in an appeal of the Executive Director's decision pursuant to subsection (4), is final and there is no appeal from that decision.

Misleading Disclosure

Securities Act

221.1(1) – In this section, "Commission" includes the Executive Director and any member, officer, employee, appointee or agent of the Commission.

221.1(2) – No person or company shall make a statement, whether oral or written, in any document, material, information or evidence provided to the Commission, that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

Forward-Looking Information

National Instrument 51-102

"Forward-looking information" = disclosure regarding possible events, conditions or financial performance, including future-oriented financial information (FOFI).

"Future-oriented financial information" (FOFI) = presented in format of statement of financial position, comprehensive income or cash flows

"Financial outlook" = not presented in format of statement of financial position, income or cash flows

4A.1 – This Part applies to forward-looking information (FLI) disclosed by a reporting issuer other than orally.

4A.2 – Reporting issuer must not disclose FLI unless the issuer has a reasonable basis for the FLI.

4A.3 – A reporting issuer that discloses material forward-looking information must include disclosure that

(e) Identifies forward-looking information as such
(f) Cautions users of FLI that actual results may vary from the FLI, and identifies material risk factors that could cause actual results to differ materially from the FLI
(g) States the material factors or assumptions used to develop FLI
(h) Describes the issuer's policy for updating FLI if it includes procedures in addition to those in 5.8.

4B.1 – This part applies to FOFI or a financial outlook that is disclosed by a reporting issuer, other than orally.

4B.2 – Must not disclose FOFI or a financial outlook unless based on assumptions that are reasonable in the circumstances. Must be limited to a period for which the information can be reasonably estimated, and use the accounting policies the issuer expects to use for the period covered.

4B.3 – Must also disclose date management approved the FOFI or financial outlook, explain the purpose of the FOFI or financial outlook, and caution readers that the information may not be appropriate for other purposes.

Aiding and Abetting

212.1 – No person or company shall do or omit to do anything that the person or company knows or reasonably ought to know aids, abets or counsels any other person or company to contravene Alberta securities laws.

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Offence of Non-Compliance

194(1) – A person or company that contravenes Alberta securities laws is guilty of an offence and is liable to a fine of not more than $5 000 000 or to imprisonment for a term of not more than 5 years less a day, or to both.

194(3) – Every person or company who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by another person or company, whether or not a charge has been laid or a finding of guilt has been made against the other person or company in respect of the offence under subsection (1), is also guilty of an offence and is liable to a fine of not more than $5 000 000 or to imprisonment for a term of not more than 5 years less one day or to both.

194(3.1) – Section 212.1 applies to a person or company whether or not a charge has been laid or a finding of guilt has been made against the other person or company in respect of an offence under subsection (1).

Offence of Failure to Disclose Material Change

194(4) – Despite the fine under subsection (1), a person or company that contravenes section 147 is guilty of an offence and is liable to a fine of

(a) an amount not less than the profit made or the loss avoided by the person or company because of the contravention, and
(b) an amount not more than the greater of
    (i) $5 000 000, and
    (ii) an amount equal to triple the amount of the profit made or the loss avoided by the person or company because of the contravention.

194(5) – If it is not possible to determine the profit made or the loss avoided by a person or company by reason of the contravention, subsection (4) does not apply and subsection (1) applies.

Order for Restitution

194(6) – If a person or company is guilty of an offence under this section, the court

(a) may make an order requiring the person or company to compensate or make restitution to an aggrieved person or company, and

(b) may make any other order that the court considers appropriate in the circumstances.

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Order of Commission

Securities Act

198(1) – Where the Commission considers that it is in the public interest to do so, the Commission may order one or more of the following:

(a) that trading in or purchasing cease in respect of any security or derivative as specified in the order;

(b) that a person or company cease trading in or purchasing securities, derivatives, specified securities or a class of securities or derivatives as specified in the order;

(b.1) that the registration or recognition of a person or company under Alberta securities laws be suspended or restricted for such period as is specified in the order or be terminated, or that terms, conditions, restrictions or requirements be imposed on the registration or recognition;

(b.2) that a person or company be reprimanded;

(c) that any or all of the exemptions contained in Alberta securities laws do not apply to the person or company named in the order;

(c.1) that a person or company is prohibited from engaging in investor relations activities;

(d) that a person resign one or more positions that the person holds as a director or officer of an issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization, designated information processor, recognized quotation and trade reporting system or designated benchmark administrator;

(e) that a person is prohibited from becoming or acting as a director or officer or as both a director and an officer

(i) of any issuer or other person or company that is authorized to issue securities, or

(ii) of a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization, designated information processor, recognized quotation and trade reporting system or designated benchmark administrator;

(e.1) that a person or company is prohibited from advising in securities or derivatives;

(e.2) that a person or company is prohibited from becoming or acting as a registrant, investment fund manager or promoter;

(e.3) that a person or company is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

(e.4) that a person or company referred to in subsection (1.01) submit to a review of its practices and procedures;

(e.5) that a person or company referred to in subsection (1.01) make changes to its practices and procedures;

(f) that a person or company is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information, document, record or other material of any kind that is described in the order;
(g) that a person or company disseminate to the public, by the method, if any, described in the order, the information, document, record or other material relating to the affairs of the registrant or issuer that the Commission considers must be disseminated;
(h) that a person or company amend, in the manner specified in the order, any information or record of any kind disseminated to the public as described in the order;
(i) if a person or company has not complied with Alberta securities laws, that the person or company pay to the Commission any amounts obtained or payments or losses avoided as a result of the non-compliance.

Administrative Penalties

Securities Act

199(1) – If the Commission, after a hearing,

(a) determines that

(i) a person or company has contravened or failed to comply with any provision of Alberta securities laws, or

(ii) a person or company authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Alberta securities laws by another person or company,

and

(b) considers it to be in the public interest to make the order,

the Commission may order the person or company to pay an administrative penalty of not more than $1 000 000 for each contravention or failure to comply.

199(2) – The Commission may make an order pursuant to this section notwithstanding the imposition of any other penalty or sanction on the person or company or the making of any other order by the Commission related to the same matter.

Application to Court

Securities Act

197(1) – The Executive Director, in addition to any other rights that the Executive Director or the Commission may have, may, where the Executive Director considers it to be in the public interest to do so, apply to the Court of King's Bench for a declaration that a person or company has not complied with or is not complying with any provision of Alberta securities laws.

197(2) – Before an application is made under subsection (1), neither the Executive Director nor the Commission is required to hold a hearing to determine whether the person or company has not complied with or is not complying with any provision of Alberta securities laws.

197(3) – If the Court makes a declaration under subsection (1), the Court may, notwithstanding

(a) the imposition of any penalty under section 194, or

(b) any order made under section 198 or 199,

make any order under this section that the Court considers appropriate with respect to the person or company.

197(4) – Without limiting the generality of subsection (3), an order made under subsection (3) may include one or more of the following:

(a) an order that the person or company comply with the provision or the decision;
(b) an order that the person or company purchase securities of a security holder;
(c) an order rescinding any transaction relating to trading in securities or derivatives;

(d) an order requiring the issuance, cancellation, purchase, exchange or disposition of a security or derivative;
(e) an order prohibiting the voting or exercise of any other right attaching to a security or derivative;
(f) an order appointing officers and directors in place of or in addition to all or any of the officers of the issuer that is the subject of the application;
(g) an order directing a person or company to submit to a review by the Commission of the person's or company's practices and procedures and to institute changes as directed by the Commission;
(h) an order directing that the person or company repay to a security holder any part of the money paid by the security holder for a security or derivative;
(i) an order requiring the person or company to compensate or make restitution to an aggrieved person or company;
(j) an order requiring the person or company to pay general or punitive damages to any other person or company;
(k) an order requiring the person or company to pay to the Minister any amounts obtained as a result of the non-compliance with any provision of Alberta securities laws.

197(5) – An application under this section may be made ex parte, unless the Court of King's Bench otherwise directs.

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

Providing Information to Regulator

57.7 – No person or company purporting to provide information respecting an alleged wrongdoing by another person or company shall make a statement, whether oral or written, in any document, material, information or evidence provided to a Commission staff member that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act

203(0.1) – In this Part, "expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including an entity that is a designated rating organization.

203(1) – If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against

(a) the issuer or a selling security holder on whose behalf the distribution is made,
(b) each underwriter of the securities that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made,
(c) every director of the issuer at the time the prospectus was filed,
(d) every person or company whose consent to disclosure of information in the prospectus has been filed but only with respect to reports, opinions or statements that have been made by them, and

(e) every person or company who signed the prospectus.

203(2) – If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, a right of action for rescission against

(a) the issuer or a selling security holder on whose behalf the distribution is made, and

(b) every underwriter of the securities.

203(3) – If the purchaser elects to exercise a right of action for rescission against a person or company, the purchaser shall have no right of action for damages against that person or company.

203(11) – If in a distribution of securities

(a) no receipt for a prospectus was issued,

(b) no exemption exists or was given exempting the filing of a prospectus, and

(c) a misrepresentation existed in respect of the distribution,

each purchaser of the securities has a right of rescission and a right of action for damages as if a prospectus containing a misrepresentation had been filed in respect of the distribution.

203(14) – The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right that the purchaser may have at law.

203(15) – If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a prospectus, the misrepresentation is deemed to be contained in the prospectus.

During Distribution – Action for Damages for Misrepresentation in Offering Memorandum

Securities Act

204(1) – If a person or company purchases securities offered by an offering memorandum or other prescribed offering document that contains a misrepresentation, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action

(a) for damages against

(i) the issuer or selling security holder on whose behalf the distribution is made,

(ii) every director of the issuer at the date of the document, and

(iii) every person or company who signed the document,

and

(b) for rescission against the issuer or selling security holder on whose behalf the distribution is made.

204(2) – Notwithstanding subsection (1)(b), if the purchaser elects to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to in subsection (1)(a).

204(9) – The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right that the purchaser may have at law.

204(10) – If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, an offering memorandum or other prescribed offering document, the misrepresentation is deemed to be contained in the offering memorandum or other prescribed offering document.

After Distribution – Action for Damages for Misrepresentation

Securities Act

211.03(1) – Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during

the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer,
(b) each director of the responsible issuer at the time the document was released,
(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document,
(d) each influential person, and each director and officer of an influential person, who knowingly influenced
    (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
    (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document,

and

(e) each expert where
    (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
    (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

211.03(2) – Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer,
(b) the person who made the public oral statement,
(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement,
(d) each influential person, and each director and officer of the influential person, who knowingly influenced
    (i) the person who made the public oral statement to make the public oral statement, or
    (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement,

and

(e) each expert where
    (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

211.03(3) – Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
(b) the person who made the public oral statement,
(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
(d) the influential person,
(e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and
(f) each expert where
    (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
    (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

211.03(4) – Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against

(a) the responsible issuer,
(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure, and
(c) each influential person, and each director and officer of an influential person, who knowingly influenced
    (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
    (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

211.04(1) – In an action under section 211.03 in relation to a misrepresentation in a document that is not a core document or a misrepresentation in a public oral statement, a person or

company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company

(a) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained the misrepresentation,
(b) at or before the time that the document was released or the public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation, or
(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

211.04(2) – A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 211.03 in relation to an expert.

211.04(3) – In an action under section 211.03 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company

(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change,
(b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change, or
(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

211.04(4) – A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 211.03 in relation to

(a) a responsible issuer,
(b) an officer of a responsible issuer,
(c) an investment fund manager, or
(d) an officer of an investment fund manager.

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Offence of Non-Compliance

Securities Act

194(2) – No person or company is guilty of an offence under section 57.7, 92(4.1) or 221.1 if the person or company, as the case may be, did not know, and in the exercise of reasonable diligence would not have known, that the statement referred to in that subsection was misleading or untrue or that it omitted to state a fact that was required to be stated or that was necessary to make the statement not misleading in light of the circumstances in which it was made.

194(2.1) – No person is guilty of an offence under section 198.1(10) if that person did not know, and in the exercise of reasonable diligence would not have known, that the act or course of conduct which that person engaged in caused that person to fail to comply with section 198.1(10).

Defences – Misrepresentation in Prospectus

Securities Act

203(4) – No person or company is liable under subsection (1) or (2) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

203(5) – No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) if the person or company proves

(a) that the prospectus was filed without the person's or company's knowledge or consent and that, on becoming aware of its filing, the person or company promptly advised the Executive Director and gave reasonable general notice that it was so filed;

(b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus the person or company withdrew the person's or company's consent to it and advised the Executive Director and gave reasonable general notice of the withdrawal and the reason for it;

(c) that, with respect to any part of the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that

    (i) there had been a misrepresentation,

    (ii) the part of the prospectus did not fairly represent the report, opinion or statement of the expert, or

    (iii) the part of the prospectus was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to represent fairly the person's or company's report, opinion or statement as an expert,

    (i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the prospectus fairly represented the person's or company's report, opinion or statement, or

    (ii) on becoming aware that the part of the prospectus did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Executive Director and gave reasonable general notice that misuse had been made of it and that the person or company would not be responsible for that part of the prospectus;

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document,

    (i) it was a correct and fair representation of the statement or copy of or extract from the document, and

    (ii) the person or company had reasonable grounds to believe and did believe that the statement was true.

203(6) – No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion or statement as an expert if the person or company proves that, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

203(7) – No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) with respect to any part of the prospectus not purporting to be made on

the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert if the person or company proves that, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

203(8) – No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter.

203(9) – In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied on.

203(13) – The amount recoverable under this section shall not exceed the price at which the securities were offered to the public.

203(13.1) – A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

203(14.1) – The defences provided under this section are in addition to and do not derogate from any other defences that the defendant may have at law.

Defences – Misrepresentation in Offering Memorandum

Securities Act

204(3) – Where a misrepresentation is contained in an offering memorandum or other prescribed offering document, no person or company is liable under subsection (1) if the person or company proves that

(a) the purchaser had knowledge of the misrepresentation,

(b) the document was sent to the purchaser without the person's or company's knowledge or consent and, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the Executive Director and the issuer that it was sent without the knowledge and consent of the person or company,

(c) the person or company, after the sending of the document and before the purchase of the securities, on becoming aware of the misrepresentation in the document, withdrew the person's or company's consent to the document and gave reasonable notice to the Executive Director and the issuer of the withdrawal and the reason for it,

(d) with respect to any part of the document purporting to be made on the authority of an expert or purporting to be a fair copy of, or an extract from, a report, opinion or statement of an expert, the person or company did not have any reasonable grounds to believe, and did not believe, that

    (i) there had been a misrepresentation, or

    (ii) the relevant part of the document

        (A) did not fairly represent the report, opinion or statement of the expert, or

        (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert,

or

(e) with respect to any part of the document not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, after conducting a reasonable investigation, the person or company had no reasonable grounds to believe, and did not believe, that there was a misrepresentation.

204(4) – The amount recoverable under this section shall not exceed the price at which the securities were offered under the offering memorandum or other prescribed offering document.
204(5) – Subsection (3)(b) to (e) do not apply to the issuer.
204(6) – In an action for damages pursuant to subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.
204(8) – A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.
204(8.1) – Despite subsections (7) and (8), an issuer is not liable if it does not receive any proceeds from the distribution and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation

(a) was based on information that was previously generally disclosed by the issuer,
(b) was a misrepresentation at the time of that disclosure, and
(c) was not subsequently publicly corrected or superseded by the issuer before the completion of the distribution.

204(9.1) – The defences provided under this section are in addition to and do not derogate from any other defences that the defendant may have at law.

Defences – Liability After Distribution

Securities Act

211.03(5) – In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.
211.03(6) – In an action under this section,

(a) multiple misrepresentations having common subject-matter or content may, in the discretion of the court, be treated as a single misrepresentation, and
(b) multiple instances of failure to make timely disclosure concerning common subject-matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

211.03(7) – In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the responsible issuer, no other person is liable with respect to any of the issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.
211.04(5) – A person or company is not liable in an action under section 211.03 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security

(a) with knowledge that the document or public oral statement contained a misrepresentation, or
(b) with knowledge of the material change.

211.04(6) – A person or company is not liable in an action under section 211.03 in relation to

(a) a misrepresentation if that person or company proves that,
    (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation,

or

(b) a failure to make timely disclosure if that person or company proves that

(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

211.04(7) – In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including

(a) the nature of the responsible issuer,

(b) the knowledge, experience and function of the person or company,

(c) the office held, if the person was an officer,

(d) the presence or absence of another relationship with the responsible issuer, if the person was a director,

(e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations,

(f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts,

(g) the period within which disclosure was required to be made under the applicable law,

(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert,

(i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement,

(j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and

(k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

211.04(8) – A person or company is not liable in an action under section 211.03 in respect of a failure to make timely disclosure if

(a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under section 146,

(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,

(c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,

(d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and

(e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

211.04(9) – A person or company is not liable in an action under section 211.03 for a misrepresentation in forward-looking information if the person or company proves all of the following:

(a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
    (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
(b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

211.04(10) – A person or company is deemed to have satisfied the requirements of subsection (9)(a) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

(a) made a cautionary statement that the oral statement contains forward-looking information,
(b) stated that
    (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information, and
(c) stated that additional information about
    (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
    (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily available document or in a portion of such a document and has identified that document or that portion of the document.

211.04(11) – For the purposes of subsection (10)(c), a document filed with the Commission or otherwise generally disclosed is deemed to be readily available.

211.04(12) – Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or forward-looking information in a document released in connection with an initial public offering.

211.04(13) – A person or company, other than an expert, is not liable in an action under section 211.03 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

211.04(14) – An expert is not liable in an action under section 211.03 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

211.04(15) – A person or company is not liable in an action under section 211.03 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

211.04(16) – A person or company is not liable in an action under section 211.03 for a misrepresentation in a document or a public oral statement if the person or company proves that

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or an exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
(c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

211.04(17) – A person or company, other than the responsible issuer, is not liable in an action under section 211.03 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

(a) the person or company promptly notified the directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within 2 business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

Safe Harbour for Forward-Looking Information

Securities Act

205.1(1) – A person or company is not liable in an action under section 203, 204 or 205 for a misrepresentation in forward-looking information if the person or company proves all of the following:

(a) the document containing the forward-looking information contained, proximate to that information,
    (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
(b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

205.1(2) – Subsection (1) does not relieve a person or company of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act

222(4) – No person or company has any rights or remedies and no proceedings lie or may be brought against any person or company for any act or omission of the last mentioned person or company done or omitted in compliance with Alberta securities laws.

Limitation Periods

Securities Act

201(1) – No proceedings under Part 16 [enforcement by regulator] shall be commenced in a court or before the Commission more than 6 years from the day of the occurrence of the last event on which the proceeding is based.

201(2) – If an application, motion or notice is filed with a court or with the Commission in respect of an investigation under section 41 or an examination under section 58, the limitation period established by subsection (1) is suspended on the date the application, motion or notice is filed and resumes running on the date

(a) the court or Commission decides the matter that is the subject of the application, motion or notice and
    (i) all appeals have been exhausted, or
    (ii) the time for an appeal has expired without an appeal being filed,

or

(b) the application, motion or notice is abandoned or discontinued.

201(3) – The limitation period established by subsection (1) may be suspended by express agreement of the Executive Director and the person or company against whom the proceeding could be commenced.

211 – Unless otherwise provided in this Act, no action may be commenced to enforce a right created by Part 17 [liability for misrepresentation during distribution],

(a) in the case of an action for rescission, more than 180 days from the day on which the transaction that gave rise to the cause of action was completed, or
(b) in the case of any other action, later than the earlier of
    (i) 180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, and

(ii) 3 years from the day on which the transaction, contravention or alleged contravention, as the case may be, that gave rise to the cause of action was completed or committed, as the case may be.

211.095(1) – No action shall be commenced under section 211.03 [civil liability after distribution],

(a) in the case of misrepresentation in a document, later than the earlier of
    (i) 3 years after the date on which the document containing the misrepresentation was first released, and
    (ii) 6 months after the issuance of a news release disclosing that permission has been granted to commence an action under section 211.03 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of
    (i) 3 years after the date on which the public oral statement containing the misrepresentation was made, and
    (ii) 6 months after the issuance of a news release disclosing that permission has been granted to commence an action under section 211.03 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation,

(c) in the case of a failure to make timely disclosure, later than the earlier of
    (i) 3 years after the date on which the requisite disclosure was required to be made, and
    (ii) 6 months after the issuance of a news release disclosing that permission has been granted to commence an action under section 211.03 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

211.095(2) – A limitation period established by subsection (1) in respect of an action is suspended on the date an application for leave under section 211.08 is filed with the court and resumes running on the date,

(a) the court grants leave or dismisses the motion and,
    (i) all appeals have been exhausted, or
    (ii) the time for an appeal has expired without an appeal being filed,

or

(b) the motion is abandoned or discontinued.

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-107

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190801_51-358_reporting-of-climate-change-related-risks.pdf

Credit Unions

What agency, department or authority supervises credit unions?

Alberta Superintendent of Financial Institutions
https://www.alberta.ca/about-financial-institutions-news-links

What statute governs the creation or licensing of credit unions in the jurisdiction?

Credit Union Act, RSA 2000, c. C-32
https://kings-printer.alberta.ca/1266.cfm?page=c32.cfm&leg_type=Acts&isbncln=9780779842384

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

67(1) – Subject to this Act and the regulations and the bylaws of a credit union, the board is responsible for the general management of the business and affairs of the credit union.
67(2) – The board may appoint from among the directors an executive committee consisting of not less than 3 directors.
67(3) – Subject to this Act, the board may delegate any of its powers, duties or functions under this Act or the regulations in accordance with a prescribed authorization.

Duty of Care and Good Faith

73(1) – A director or officer of a credit union, in exercising the director's or officer's powers and performing the director's or officer's duties, shall

(a) act honestly, in good faith and with a view to the best interests of the credit union as a whole,
(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, and
(c) comply with the articles and the bylaws.

73(2) – In considering whether a particular transaction or course of action is in the best interests of the credit union as a whole, a director or officer shall also have due regard to the interests of all customers who have deposits with it.

Duty to Comply with Law

72(1) – This Division does not operate so as to limit the duties and liabilities that a director, officer or employee of a corporation may have under any other law.
72(2) – No provision in a contract or the articles or the bylaws or a resolution of a credit union relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves the Director or officer from liability for a breach of this Act or the regulations.

Duty to Disclose Financial Statements

83(1) – At each annual general meeting, the board of a credit union shall place before the members, in addition to any other information required by this Act or prescribed to be required,

(a) except in the case of a credit union that does not have an auditor, the annual financial statements for the previous fiscal year of the credit union with the auditor's report on them, and
(b) in the case of a credit union that does not have an auditor, the unaudited annual financial statements for the previous fiscal year of the credit union.

Duty to Adhere to Prudent Investment Standards

101(1) – A credit union shall adhere to prudent investment standards in making investment decisions and in managing its total investments.
101(2) – The board, on the recommendations of the finance committee, shall establish written procedures to ensure that prudent investment standards are applied by it in making investment decisions and in managing its total investments.
101(3) – The procedures referred to in subsection (2), including any amendments to those procedures, must be approved by the Corporation before they are implemented.
102(1) – A credit union (in this subsection referred to as "the investor") shall not acquire any securities issued by another credit union if, as a result of that acquisition, the value of the securities held by the investor that have been issued by other credit unions, together with the amounts of loans made to and deposits made with other credit unions by the investor, would exceed the prescribed amount.
102(2) – A credit union shall not make an investment in derivative securities unless the sole purpose of the investment is to hedge an asset or liability.

Duty to Adhere to Prudent Lending Standards

129(1) – Notwithstanding anything in this Division, a credit union shall adhere to prudent lending standards in making loans.
129(2) – For the purposes of subsection (1), prudent lending standards are standards that, in the overall context of a loan portfolio, a reasonably prudent person would apply to loans made to another person such that the loans will yield a reasonable expectation of fair return without undue risk of loss or impairment.
129(3) – The board shall establish written procedures to ensure that prudent lending standards are applied in the making of loan decisions and in the management of the credit union's loan portfolio.
129(4) – A credit union shall review its prudent lending standards at least annually.
129(5) – The credit committee shall ensure that applicable procedures established under subsection (3) are followed before granting any approval for a loan.

Duty to Comply with Capital and Liquidity Requirements

109 – A credit union shall maintain adequate capital, as prescribed by the Minister.

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Complaint to Minister

217(1) – The Minister may, for the purpose of inquiring or facilitating the Corporation's inquiries into

(a) a body corporate's condition and ability to meet its obligations,
(b) the conduct of its business or affairs, or
(c) any complaint made by any of its members, customers or creditors,

or for any purpose related to an audit, direct the body corporate, its subsidiary, a related party, a present or former director, officer, auditor, employee or agent of the body corporate or of its subsidiary or any other prescribed person to provide or produce, within such reasonable period of time as is stipulated in the direction, any information or document.

Examination by Minister

95 – The Minister may examine any aspect of the business or affairs of a credit union or its subsidiary in order to determine, for purposes related to the administration or enforcement of this Act,

(a) the corporation's condition and ability to meet its obligations,
(b) whether the corporation is following sound business and financial practices,
(c) the corporation's management procedures,
(d) the standards of the corporation's management, or
(e) whether the corporation is contravening or has contravened this Act or the regulations.

Re-Valuation of Land by Minister

229(1) – Where the Minister has reason to believe, with respect to a credit union or Central or any of its subsidiaries, that

(a) the valuation placed on its land or any portion of its land is greater than the actual value of the land,
(b) the amount of a loan made by it and secured by a mortgage of land is greater than the value of the land securing it or that the land is not sufficient security for the loan, or
(c) the market value of any other property is less than the amount shown in its books,

the Minister may require that corporation to obtain an appraisal, or may personally obtain an appraisal, conducted in the prescribed manner at the expense of the corporation.

229(2) – Having regard to the appraised value, the Minister may

(a) substitute the appraised value of the property for the corporation's valuation, or
(b) write down the value of a loan referred to in subsection (1)(b) by such amount as the Minister considers appropriate,

and, where the Minister takes such action, the Minister shall direct the corporation to adjust the book value of the property or the loan accordingly.

229(3) – A credit union shall ensure that a direction of the Minister under subsection (2) is noted in the corporation's financial statements for the year in which the direction is made.

229(4) – Where a loan or guarantee requires the approval of a special loans committee and is to be wholly or partly secured by a mortgage of land, the special loans committee may require the body corporate to obtain an appraisal before deciding on the approval.

Order by Minister

218(1) – Where the Minister considers that a credit union or Central or its subsidiary is doing or is about to do something or is failing to do something and that the act or failure to act

(a) is or would be in contravention of this Act or the regulations,
(b) is or would be inconsistent with
    (i) in the case of a credit union or its subsidiary, the purposes of a credit union or generally with the mode of operation set out in section 26(2), or
    (ii) in the case of Central or its subsidiary, the purposes of Central,
(c) might reasonably be expected to result in a situation that would be in contravention of this Act or the regulations or inconsistent with the purposes or mode of operation referred to in clause (b),
(d) constitutes or would constitute a practice that might adversely affect the interests of members, customers or creditors of the credit union or Central, or
(e) might reasonably be expected to result in a situation that would have a material adverse effect on the interests of the Government,

the Minister may order that body corporate to, or order the body corporate to procure its subsidiary to, cease or refrain from doing or to do that thing, as the case may be, in order to remedy that situation.

218(2) – The Minister shall provide a copy of an order made under subsection (1) to each director of the body corporate.

218(3) – An order under this section does not affect any other liability that a corporation may have under any other law in respect of the act or failure to act.

Application for Injunction

219 – Without limiting any other remedy provided for in this Act, the Minister may apply for an injunction to restrain a credit union or Central or any related party from contravening any provision of this Act, the regulations or the body corporate's articles or bylaws.

Offence – Non-Compliance

221(1) – A person who contravenes any provision of this Act or the regulations is guilty of an offence against this Act.

221(2) – A contravention of this Act or the regulations that is of a continuing nature constitutes a separate offence in respect of each day or part of a day during which it continues.

221(3) – Where a corporation is guilty of an offence against this Act, a director, officer or agent of the corporation who directed, authorized, assented to, permitted, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence.

221(4) – This section does not apply to a contravention of section 41(1) or 85(1.1) or (2) or section 160(1) in respect of section 41(1) or section 166(1) in respect of section 85(1.1) or (2).

Offence – Misleading Information

222(1) – A body corporate or its subsidiary shall not wilfully

(a) give the Minister, the Corporation, its auditor or any person responsible for its supervision, administration, liquidation or examination information that is false or misleading,

(b) provide to the Minister or the Corporation a report, return, notice or other document that

(i) contains an untrue statement of a material fact, or

(ii) omits to state a material fact that is necessary to make a statement contained in the document not misleading in the light of the circumstances in which it is made,

(c) make any representation to its members, customers or creditors or to the public that is false or misleading, or

(d) make a false or deceptive entry, or omit any material particular, in any record required to be kept by this Act or the regulations.

222(2) – A body corporate or its subsidiary shall comply with

(a) any order or direction made by the Minister or the Corporation, or

(b) the terms and conditions of any approval given by the Minister or the Corporation,

pursuant to this Act or the regulations.

222(3) – Where a person makes a report in good faith to the Minister or the Corporation or to the auditor of a body corporate in the performance of a duty or the exercise of a power given to the person by this Act, that body corporate or its subsidiary shall not take any action against the person that is adverse to the person's interests for making that report.

222(4) – If a corporation contravenes subsection (3), then, notwithstanding its liability under that subsection, the corporation is liable to the person for any financial losses incurred by the person in respect of the corporation's act.

Penalties for Offences

224(1) – A person who is convicted of an offence against this Act for which no specific penalty is fixed by this section is liable, subject to this section,

(a) in the case of an individual, to a fine of not more than $5000, and
(b) in the case of any other person, to a fine of not more than $25 000.

224(2) – A person who is convicted of an offence involving contravention of section 50(1) or 142(4), or of section 165(1) in respect of section 50(1), is liable to a fine of not more than $25 000 or an amount equal to 3 times the value of the benefit or advantage derived from the transaction, whichever is higher.

224(3) – A person who is convicted of an offence involving contravention of

(a) section 37(6),
(b) the duty to act honestly or in good faith under section 73(1)(a) or under section 142(1) or 164(1) in respect of section 73(1)(a), or
(c) section 222(1) or 223(4)

is liable to a fine of not more than $25 000.

224(4) – A person who is convicted of an offence involving contravention of section 77, or of section 164(1) in respect of section 77, is liable to a fine of not more than $15 000.

224(5) – The maximum penalty for an offence referred to in section 221(2) committed on the 2nd and each subsequent day of the contravention referred to in that subsection is 1/25 of the penalty applicable in respect of the first day of the contravention.

225(1) – This section applies where a credit union contravenes section 41(1) or 85(1.1) or (2) or where Central contravenes section 160(1) in respect of section 41(1) or section 166(1) in respect of section 85(1.1) or (2).

225(2) – The contravening body corporate is liable to a civil penalty in the prescribed amount in respect of each day or part of a day in which it is in contravention, and the Minister may serve a notice assessing that civil penalty on it.

225(3) – Where any amount of the penalty is not paid, that amount bears interest at the prescribed rate from the serving of the notice.

225(4) – Penalties and interest payable under this section are debts due to the Government and are recoverable as such by an action in debt.

Order to Comply

227(1) – Where a court convicts a person of an offence against this Act, then, without limiting any other liability that that person may have under this Act or any other law, the court may order that person to comply with the provision of this Act or the regulations for the contravention of which the person has been convicted.

227(2) – No civil remedy for an act is suspended or affected by reason that the act is an offence against this Act.

What section sets out the defenses available to the directors and officers for these alleged breaches?

Indemnification for Costs

79(1) – Except in respect of an action by or on behalf of the credit union to procure a judgment in its favour, a credit union may, by resolution of the board, indemnify a present or former

director or officer or a person who acts or acted at the credit union's request as a director or officer of a corporation of which the credit union is or was a shareholder or creditor (in this section referred to as the "other corporation") against costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of that person being or having been such a director or officer, but only in accordance with this section.

79(2) – Notwithstanding anything in this section, the credit union may indemnify the person only if

(a) the person acted honestly, in good faith and, subject to section 73(2), with a view to the best interests
    (i) where applicable, of the other corporation, and
    (ii) subject to subclause (i), of the credit union as a whole,

and

(b) in the case of a criminal or administrative action or proceeding, the person had reasonable grounds for believing that the conduct was lawful.

79(3) – Notwithstanding anything in this section except subsection (2), the person is entitled to indemnity from the credit union in respect of all costs, charges and expenses reasonably incurred by the person with respect to the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of the person being or having been a director or officer referred to in subsection (1) if the person was substantially successful on the merits in the person's defence of the action or proceeding and the person is fairly and reasonably entitled to indemnity.

79(4) – A credit union shall not purchase or maintain insurance for the benefit of any person acting in the capacity referred to in subsection (1) against any liability incurred by the person in that capacity if the insurance would cover liability relating to the person's failure to comply with subsection (2)(a).

79(5) – A credit union or a person referred to in subsection (1) may apply to the Court for an order approving an indemnity under this section and the Court may so order and make any further order it thinks fit.

Limitation Period

226 – A prosecution in respect of an offence against this Act may not be commenced later than 5 years after the alleged commission of the offence.

Insurance Companies

What agency, department or authority supervises insurance companies?

Alberta Superintendent of Insurance
https://www.alberta.ca/insurance

What statutes govern the creation or licensing of insurance companies in the jurisdiction?

Insurance Act
https://kings-printer.alberta.ca/1266.cfm?page=i03.cfm&leg_type=Acts&isbncln=9780779842421

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

309(1) – Subject to this Act, the directors of a provincial company must manage or supervise the management of the business and affairs of the company.

309(2) – Without limiting the generality of subsection (1), the directors of a provincial company must

(a) establish an audit committee and a conduct review committee;
(b) establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;
(c) in the case of a company that issues participating policies, establish, before issuing any participating policies, a policy for determining the dividends and bonuses to be paid to the participating policyholders;
(d) establish procedures to provide disclosure of information that this Act and the regulations require to be disclosed;
(e) establish policies and procedures to ensure that the company applies prudent investment standards in accordance with section 417;
(f) appoint the actuary of the company.

Duty of Care

310(1) – Every director and officer of a provincial company in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer must

(a) act honestly and in good faith with a view to the best interests of the company, and
(b) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.

310(2) – Every director, officer and employee of a provincial company must comply with this Act, the regulations, the company's instrument of incorporation and the bylaws of the company.

310(3) – No provision in any contract, in any resolution or in the bylaws of a provincial company relieves any director, officer or employee of the company from the duty to act in accordance with this Act and the regulations or relieves a director, officer or employee from liability for a breach of that duty.

Duty to Comply with Capital and Liquidity Requirements

414(2) – A provincial company must, in relation to its operations,

(a) maintain adequate capital and adequate and appropriate forms of liquidity, and
(b) comply with any regulations in relation to capital and liquidity.

414(5) – Even though a provincial company is complying with regulations made under subsection (3), the Minister may, by order, direct the company

(a) to increase its capital, or
(b) to provide additional liquidity in the forms and amounts that the Minister requires.

414(6) – A provincial company must comply with an order made under subsection (5) within the time the Minister specifies in the order.

Duty to Not to Engage in Unfair Practice

509(1) – No insurer, insurance agent or adjuster may

(a) make a false or misleading statement, representation or advertisement,
(b) engage in a tied selling practice prohibited by the regulations,

(c) engage in any unfair, coercive or deceptive act or practice, or
(d) make any statement or representation or commit any practice or act that is prohibited by the regulations.

509(2) – No person may, by means of misleading or false statements, procure or induce or attempt to procure or induce any person to forfeit, surrender or allow the lapse of any policy of insurance.

Duty of Insurance Agents – Knowledgeable Personnel

486 – Every holder of a restricted insurance agent's certificate of authority and every insurer on behalf of which the holder is marketing insurance must
(a) establish reasonable procedures to ensure that personnel marketing insurance for the holder are knowledgeable about the insurance being marketed, and
(b) use those procedures.

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Derivative Action

774 – In this Division,
(a) "action" means an action under this Act or any other law;
(b) "complainant" means
(i) the Minister,
(ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a provincial company or of any of its affiliates,
(iii) a director or an officer or a former director or officer of a provincial company or of any of its affiliates,
(iv) a participating policyholder or former participating policyholder of a provincial company, or
(v) any other person who, in the opinion of the Court, is a proper person to make an application under section 775 or 776.

775(1) – Subject to subsection (2), a complainant may apply to the Court for permission to
(a) bring an action in the name of and on behalf of a provincial company or any of its subsidiaries, or
(b) intervene in an action to which a provincial company or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company or subsidiary.

775(2) – No permission may be granted under subsection (1) unless the Court is satisfied that
(a) the complainant has given reasonable notice to the directors of the provincial company or its subsidiary of the complainant's intention to apply to the Court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute, defend or discontinue the action,
(b) the complainant is acting in good faith, and
(c) it appears to be in the interests of the provincial company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

775(3) – In connection with an action brought or intervened in under this section, the Court may at any time make any order it thinks fit, including, without limiting the generality of the foregoing, any or all of the following:

(a) an order authorizing the complainant or any other person to control the conduct of the action;
(b) an order giving directions for the conduct of the action;
(c) an order directing that any amount adjudged payable by a defendant in the action must be paid, in whole or in part, directly to a former or present security holder of the provincial company or its subsidiary instead of to the company or its subsidiary;
(d) an order requiring the provincial company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

776(1) – A complainant may apply to the Court for an order under this section.

776(2) – Where, on an application under subsection (1), the Court is satisfied that in respect of a provincial company or any of its affiliates

(a) any act or omission of the company or any of its affiliates effects or threatens to effect a result,
(b) the business or affairs of the company or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner, or
(c) the powers of the directors of the company or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any participating policyholder, security holder or creditor, the Court may make an order to rectify the matters complained of.

776(3) – On an application under subsection (1), the Court may make any interim or final order it considers appropriate, including, without limitation, any or all of the following orders:

(a) an order restraining the conduct complained of;
(b) an order to regulate the company's affairs by amending its bylaws;
(c) an order appointing directors in place of or in addition to all or any of the directors then in office;
(d) an order directing an issue or exchange of securities;
(e) an order directing the provincial company to purchase securities of a security holder;
(f) an order directing the provincial company or any other person to pay to a security holder any part of the money paid by the security holder for securities;
(g) an order directing the company, subject to section 253(3), to pay a dividend to its participating policyholders or shareholders or a class of its participating policyholders or shareholders;
(h) an order varying or setting aside a transaction or contract to which the provincial company is a party and compensating the company or any other party to the transaction or contract;
(i) an order requiring the provincial company, within a time specified by the Court, to produce to the Court or an interested person financial statements or an accounting in any other form the Court determines;
(j) an order compensating an aggrieved person;
(k) an order directing rectification of the registers or other records of the provincial company;
(l) an order requiring the trial of any issue;
(m) an order for the liquidation and dissolution of the provincial company.

777 Where a person other than the Minister makes an application under section 775 or 776, that person must give notice of the application to the Minister, and the Minister may appear and be heard in person or by counsel.

778(1) – A complainant is not required to give security for costs in any application made or action brought or intervened in under section 775 or 776.
778(2) – In an application made or an action brought or intervened in under section 775 or 776, the Court may at any time order the provincial company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.
779(1) – An application made or an action brought or intervened in under section 775 or 776 must not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the provincial company or its subsidiary has been or may be approved by the shareholders of the company or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 775 or 776.
779(2) – An application made or an action brought or intervened in under section 775 or 776 must not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on any terms the Court considers appropriate, and if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

Examination by Minister

756 – The Minister must each year direct an examiner to examine the business or affairs of each provincial company in order to determine, for purposes related to the administration of this Act,

(a) the company's condition and ability to meet its obligations,
(b) whether the company is following sound business and financial practices,
(c) the procedures and standards of the management of the company, and
(d) whether or not the company is in compliance with this Act, the regulations, any order under this Act and any term, condition or restriction of its licence.

757 – The Minister may direct an examiner to examine the business or affairs of a provincial company or its subsidiary for the purposes of

(a) safeguarding the interests of the company's policyholders,
(b) safeguarding the assets of the company or of the subsidiary, or
(c) determining whether the company is able to meet its obligations.

758(1) – An examiner may, for the purposes referred to in section 755, direct any of the following to provide to the examiner, within a reasonable period of time that is stipulated in the direction, any information specified by the examiner:

(a) a regulated person, a subsidiary of a regulated person, a related party, within the meaning of that term in Part 2, Subpart 12, of a regulated person or a holding body corporate of a regulated person;
(b) a present or former director, auditor, officer, employee or creditor of a regulated person or the regulated person's subsidiary or holding body corporate;
(c) an insured.

758(2) – A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.
758(3) – Where a person served with a direction under this section does not provide the information in accordance with the direction, the Minister may on 2 days' written notice to that person, without affecting any sanction that the person may be subject to under this Act, apply to the Court for an order under subsection (4).

758(4) – The Court may order the person to provide the information subject to any conditions the Court considers appropriate if the Court is satisfied that the information is in the possession or under the control of the person and is relevant to a purpose referred to in section 755.
758(5 – An examiner may copy or otherwise record any information provided under this section and must, within a reasonable time, return the originals of any documents that have been provided under this section to the person who provided them.
759(1) – Subject to subsection (6), an examiner may, for the purposes referred to in section 755, enter at any reasonable time any premises or place of a regulated person, a subsidiary or holding body corporate of a regulated person or any other premises or place that the examiner believes on reasonable grounds contains records, documents or property of a regulated person or a subsidiary or holding body corporate of a regulated person.
759(2) – An examiner who enters any premises or place under this section may require the owner or manager of the premises or place and any other person in the premises or at the place

(a) to give the examiner all reasonable assistance and to make reasonable efforts to answer all the examiner's questions,
(b) to produce for inspection or examination all records or documents that are or may be relevant, and
(c) to produce any property of the regulated person or subsidiary or holding body corporate of the regulated person.

759(3) – An examiner may in the course of inspecting or examining records or documents under subsection (2)

(a) make copies of or take notes from them, or
(b) temporarily remove them.

759(4) – Where an examiner removes records or documents under subsection (3), the examiner

(a) must give a receipt for them to the person from whom they were taken,
(b) may make copies of, take photographs of or otherwise record them, and
(c) must, within a reasonable time, return them to the person to whom the receipt was given.

759(5) – A person who receives a request from an examiner under this section must comply with it.
759(6) – When the premises or place referred to in subsection (2) is a dwelling place, the examiner must not enter the dwelling place without the consent of the occupant of the dwelling place.

Notice and Order Preventing Contravention

764(1) – If, in the Minister's opinion, a person has committed or is committing any act or pursuing any course of conduct that

(a) contravenes this Act or the regulations,
(b) might reasonably be expected, if continued, to result in a state of affairs that would be in contravention of this Act or the regulations,
(c) is a market conduct activity that has or might reasonably be expected, if continued, to prejudice or adversely affect people who are insured or are interested in acquiring insurance,
(d) contravenes an undertaking given under this Act, or
(e) contravenes prescribed industry guidelines,

the Minister may give the person a notice under subsection (3).
764(2) – If, in the Minister's opinion, a provincial company is committing any act or pursuing any course of conduct that

(a) places the company in a position where it is carrying on business in an unsound manner, or
(b) might reasonably be expected, if continued, to prejudice or adversely affect the interests of policyholders,

the Minister may give the company a notice under subsection (3).

764(3) – If subsection (1) or (2) applies, the Minister may give a notice to the person referred to in subsection (1) or to the provincial company referred to in subsection (2) of the Minister's intention to make a permanent order ordering the person or company to do the following:

(a) to cease doing any act or pursuing any course of conduct specified in the notice;
(b) to perform acts specified in the notice that, in the Minister's opinion, are necessary to remedy the situation.

764(4) – If a provincial company has a substantial investment in a body corporate referred to in section 421(3) and, in the Minister's opinion, the body corporate is carrying on business in an unsound manner, the Minister may give a notice to the company of the Minister's intention to make a permanent order ordering the company to do the following:

(a) to dispose of the substantial investment within a specified time;
(b) to cease doing any act or pursuing any course of conduct specified in the notice;
(c) to perform acts specified in the notice that, in the Minister's opinion, are necessary to remedy the situation.

764(5) – If, in the Minister's opinion, the public interest may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Minister may, without notice, make a temporary order dealing with the matters in subsection (3) or (4), and the order takes effect immediately on being made.

764(6) – Where an order under this section would ultimately require compliance by a subsidiary whose business activities are regulated by or under or are otherwise subject to supervision under the Loan and Trust Corporations Act or the Securities Act, the Minister must not give a notice under subsection (3) or make a temporary order under subsection (5) without the prior consent in writing of the Minister responsible for the administration of the Loan and Trust Corporations Act or the Chair of the Alberta Securities Commission, as the case may be.

764(10) – Where

(a) no hearing is requested in accordance with subsection (8), or
(b) a hearing is held pursuant to a request in accordance with subsection (8) and the Minister, on receiving a report under subsection (9.4), is of the opinion that a permanent order should be made,

the Minister may make a permanent order, and the order takes effect immediately on being made or at a later date specified in the order.

Order for Compliance

767(1) – Where it appears to the Minister that a person has contravened

(a) a consent or approval given or an order made under this Act,
(b) a compliance undertaking entered into, or
(c) a term or condition imposed on the licence of an insurer,

the Minister may apply to the Court for an order under subsection (2).

767(2) – The Court may grant an order

(a) directing the person to comply with the consent, approval, order, undertaking or term or condition or restraining the person from contravening the consent, approval, order, undertaking or term or condition, and

(b) where the person is a body corporate, directing the directors and officers of the body corporate to cause the body corporate to comply with or to cease contravening the consent, approval, order, undertaking or term or condition.

Offence – Breach of Duties

780 – A person who contravenes any of the following provisions is guilty of an offence…

(a) in Part 1,
[…]

(b) in Part 2,
(vi) sections 309(2) [duty to manage], 310(1) and (2) [duty of care].
(ix) sections…414(2) and (6) [duty to comply with capital and liquidity requirements];

(c) in Part 3…section 486 [duty of insurance agents to have knowledgeable personnel]

(d) in Part 4, sections…509 [duty not to engage in unfair practice]

Offence – False or Deceptive Statements

783(1) – A person who makes any wilfully false or deceptive statement in any register, book of account, accounting record, minute, financial statement or other record or document respecting the affairs of a licensed insurer or in any statement, return, report or reply to the Minister is guilty of an offence.

783(2) – A director, officer or employee of a licensed insurer and every member or employee of a firm of accountants appointed as the auditor of a provincial company who

(a) prepares, signs, approves or concurs in any register, book of account, accounting record, minute, financial statement or other record or document respecting the affairs of the insurer, or any statement, return, report or reply to the Minister, that the person knows to contain a false or deceptive statement, or

(b) uses a record or document referred to in clause (a) with intent to deceive or mislead any person,

is guilty of an offence.

General Rules for Offences

785 – If a body corporate commits an offence under this Act, then, whether or not the body corporate has been prosecuted or convicted in respect of the offence, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the commission of the offence is guilty of the offence.

786(1) – A person who is convicted of an offence is liable to a fine of not more than $200 000.

786(2) – If an act or omission is an offence under this Act or the regulations and the act or omission is of a continuing nature, each day or part of a day that it continues constitutes a separate offence.

788 – A justice who convicts a defendant of an offence under this Act or the regulations may, in addition to any other penalty the justice may impose, order the defendant

(a) to comply with, within a specified time, the provision of this Act or the regulations on which the conviction is based, and

(b) on the application of an aggrieved person, to make restitution to a maximum of $100 000 for loss of or damage to property suffered by the applicant as a result of the commission of the offence.

Suspension of Licence

54(1) – Where

(a) a licensed insurer or other person denies the Minister, the Superintendent or an examiner access to any information, records, documents or property that the Minister, Superintendent or examiner is authorized by this Act to have access to,
(b) the holding body corporate of a licensed provincial company fails to forward to the Minister audited financial statements in accordance with a notice under section 43(3),
(c) a licensed insurer or other person contravenes
    (i) an order of the Minister,
    (ii) a decision of a review board under section 806, or
    (iii) an order of the Court under section 767 or 809,
(d) a licensed insurer is convicted of an offence under section 511.1(7) or 605,
(e) grounds exist for the possession and control of the assets of a provincial company by the Minister,
(f) a provincial company is carrying on or soliciting business in any jurisdiction other than Alberta without first being authorized to do so under the laws of that jurisdiction,
(g) a licensed insurer fails to comply with any term or condition to which its licence is subject,
(h) a licensed insurer does not, for a period of 5 years or more, engage in the business of insurance,
(i) a licensed insurer fails to comply with the provisions of Part 4 [unfair practices], or
(j) the amount of a licensed extra-provincial company's base capital at any time falls below the respective amount specified in or under section 25(a),

the Minister may cancel, suspend or refuse to renew the licence of the insurer, or may impose terms or conditions on its licence.

54(2) – Where the Minister proposes to act under subsection (1), the Minister must give notice of that intention to the licensed insurer.

54(3) – If, in the Minister's opinion, the public interest may be prejudiced or adversely affected by any delay in acting under subsection (1), the Minister may, without notice, cancel or suspend the licence of the insurer or impose terms or conditions on its licence.

Administrative Penalties

789(1) – Where the Minister is of the opinion that a person has contravened a prescribed provision of this Act or the regulations or has contravened a written procedure established by the Board under section 604, the Minister may by notice in writing given to that person require that person to pay to the Government an administrative penalty by a date specified in the notice in the amount set out in the notice for each day or part of a day the contravention occurs or continues.

789(2) – A person who pays an administrative penalty by the date specified in the notice in respect of a contravention must not be charged under this Act with an offence in respect of that contravention.

789(3) – A notice of an administrative penalty must not be issued after 2 years from the later of
(a) the date on which the contravention to which the notice relates occurred, and
(b) the date on which evidence of the contravention first came to the attention of the Minister.

What section sets out the defenses available to the directors and officers for these alleged breaches?

Defence – Breach of Duty of Care

364 – A director, an officer or an employee of a provincial company is not liable under section 310(1) [duty of care] if the director, officer or employee relies in good faith on

(a) financial statements of the company represented to the director, officer or employee by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company, or

(b) a report of a professional advisor.

Indemnification for Costs

365(1) – Except in respect of an action by or on behalf of the provincial company to procure a judgment in its favour, a provincial company may indemnify

(a) a director or an officer of the company,

(b) a former director or officer of the company, or

(c) any person who acts or acted at the company's request as a director or an officer of an entity of which the company is or was a shareholder or creditor

against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a person referred to in any of clauses (a) to (c), if

(d) the director, officer or person acted honestly and in good faith with a view to the best interests of the company, and

(e) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the director, officer or person had reasonable grounds for believing that the impugned conduct was lawful.

365(2) – A provincial company may, with the approval of the Court, indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the company or entity to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the company or entity against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with that action if the person fulfils the conditions set out in subsection (1)(d) and (e).

365(3) – Despite anything in this section, a person referred to in subsection (1) is entitled to indemnity from the provincial company in respect of all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of the company or an entity if the person seeking indemnity

(a) was substantially successful on the merits in the defence of the action or proceedings, and

(b) fulfils the conditions set out in subsection (1)(d) and (e).

365(4) – A provincial company may, to the extent referred to in subsections (1) to (3) in respect of the person, indemnify the heirs or personal representatives of any person the company may indemnify pursuant to subsections (1) to (3).

367(1) – A provincial company or a person referred to in section 365 may apply to the Court for an order approving an indemnity under section 365(2) and the Court may so order and make any further order it thinks fit.
367(2) – An applicant under subsection (1) must give the Minister written notice of the application and the Minister is entitled to appear and to be heard at the hearing of the application in person or by counsel.
367(3) – On an application under subsection (1), the Court may order notice to be given to any interested person and that person is entitled to appear and to be heard at the hearing of the application in person or by counsel.

Limitation Period

787 – A prosecution in respect of an offence under this Act must not be commenced after 3 years from the date that the facts that constitute the alleged offence become known to the Minister.

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Alberta Superintendent of Pensions and Pension Policy Branch
https://www.alberta.ca/pensions

What statute governs the creation of employment-based pension plans in the jurisdiction?

Employment Pension Plans Act, S.A. 2012, c. E-8.1
https://kings-printer.alberta.ca/1266.cfm?page=e08p1.cfm&leg_type=Acts&isbncln=9780779834969

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Provisions imposing such duties are found in the *Employment Pension Plans Act,* as well as the following regulation established under the *Employment Pension Plans Act*:

- Alta Reg. 154/2014, *Employment Pension Plans Regulation*
  https://www.canlii.org/en/ab/laws/regu/alta-reg-154-2014/latest/alta-reg-154-2014.html

Duty of Care

35(1) – The administrator of a pension plan must ensure that the plan and the pension fund are administered in accordance with this Act, the regulations and the plan documents.
35(2) – While acting in the capacity of administrator of a pension plan, the administrator stands in a fiduciary capacity in relation to
(a) the members, and
(b) others entitled to benefits.
35(3) – Without limiting subsection (2), the administrator, while acting in the capacity of administrator of a pension plan, must
(a) act honestly, in good faith and in the best interests of
(i) the members, and
(ii) others entitled to benefits,
and

(b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.

Duty to Comply with Law

35(6) – In addition to any other responsibilities under this Act, an administrator of a pension plan must

(a) ensure that the plan documents comply with this Act and the regulations.

Duty to Supervise

35(7) – If an administrator employs an agent to exercise one or more of the powers or to perform one or more of the duties of the administrator, the administrator must

(a) be satisfied that the agent is qualified to exercise the powers or to perform the duties for which the agent is employed, and

(b) carry out reasonable and prudent supervision of the agent.

Duty to Review Plan

41(1) – The administrator of a pension plan must, at the times and in the manner required by the regulations, assess the administration of the plan, including, without limitation,

(a) the plan's compliance with this Act and the regulations,

(b) the plan's governance,

(c) the funding of the plan,

(d) the investment of the pension fund,

(e) the performance of the trustees, if any, and

(f) the performance of the administrative staff and any agents of the administrator.

41(2) – The administrator must prepare the assessment required under subsection (1) in writing and must retain that written assessment and make it available to the Superintendent on the Superintendent's request.

Duty to Establish Statement of Investment Policies and Procedures

42(1) – The administrator of a pension plan must ensure that a written governance policy that meets the prescribed criteria is established in respect of the structures and processes for overseeing, managing and administering the plan.

42(2) – The administrator of a pension plan must ensure that the plan is administered in accordance with the governance policy established under subsection (1).

43(1) – The administrator of a pension plan must ensure that a written statement of investment policies and procedures that meets the prescribed criteria is established in respect of the plan's portfolio of investments.

43(2) – The administrator of a pension plan must ensure that the pension fund is invested in accordance with the statement of investment policies and procedures established under subsection (1).

43(3) – If the plan text document of a pension plan contains a benefit formula provision, the administrator of the plan must provide to the actuary engaged to prepare the actuarial valuation report for the plan under section 38 a copy of the statement of investment policies and procedures on or before the later of

(a) the date that is 60 days after the establishment of or amendment to the statement, and

(b) the effective date of the actuary's engagement.

44 – If the plan text document of a pension plan contains a benefit formula provision, the administrator of the plan must

(a) ensure that a written funding policy is established that meets the prescribed criteria respecting funding objectives and sets out the intended method for achieving those objectives, and
(b) provide to the actuary engaged to prepare the actuarial valuation report for the plan a copy of the funding policy on or before the later of
    (i) the date that is 60 days after the establishment or amendment of the funding policy, and
    (ii) the effective date of the actuary's engagement.

Employment Pension Plans Regulation

54(1) – Subject to subsection (4), the administrator of a pension plan must, before the plan is registered, ensure, on behalf of the plan, that a written statement of investment policies and procedures is established.

54(2) – In establishing the statement referred to in subsection (1), the administrator must have regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations, including, without limitation, the following:

(a) categories of investments, including derivatives;
(b) diversification of the investment portfolio;
(c) asset mix and the basis on which that mix was determined, including by reference to volatility and rate of return expectations;
(d) liquidity of investments;
(e) the lending of cash or securities;
(f) the retention or delegation of voting rights acquired through investments;
(g) the method of, and the basis for, the valuation of investments that are not regularly traded at a public exchange;
(h) related party transactions permitted under section 17 of federal Schedule III, as it applies in accordance with section 72, and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan.

54(3) – The statement referred to in subsection (1) must include

(a) a description of the factors to which the administrator had regard when establishing the statement, and
(b) how those factors were applied to establish the policies and procedures set out in the statement.

54(4) – If investments are entirely directed by the members, a statement of investment policies and procedures is not required.

Duty to Invest Reasonably

62(1) – Investments, including loans and financial decisions, respecting a pension plan must be made

(a) in accordance with this Act and the regulations, and
(b) in the best financial interests of plan members and other persons entitled to benefits under the plan.

62(2) – Pension plan assets must be invested in a manner that a reasonable and prudent person would adopt if investing the assets on behalf of a person to whom the investing person owed a fiduciary duty to make investments

(a) without undue risk of loss, and
(b) with a reasonable expectation of a return on the investments commensurate with the risk,

having regard to the plan's liabilities.

Duty to File Proposed Amendments

17 – Without limiting section 19(b), an administrator must not administer a pension plan in a manner that reflects an amendment to the plan text document unless

(a) the application for registration of the amendment has been filed and the administrator has not received a written notice under section 145(2) that the Superintendent refuses to register the amendment, or

(b) the administrator is otherwise entitled, under section 146(4)(b), to administer the plan in that manner.

18 – If an amendment is made to the plan text document of a pension plan, the administrator must, within the prescribed period and in the form and manner required by the Superintendent, file

(a) a certified copy of the amendment,

(b) a statement in the prescribed form that, in the opinion of the administrator, the amendment complies with this Act and the regulations, and

(c) any other records required by the Superintendent.

Duty to Provide Prescribed Information

37(1) – Subject to and in accordance with the regulations, the administrator of a pension plan must, without charge, provide prescribed information, including records,

(a) to members,

(b) in the case of a member who is entitled to a benefit who is deceased, to whichever of the following is entitled to receive the benefit:

(i) the surviving pension partner of the deceased, or

(ii) the person who is, in relation to the benefit, the designated beneficiary,

or, if no person referred to in subclause (i) or (ii) is entitled to the benefit, the personal representative of the estate of the deceased,

(c) to employees who are, or are about to be, eligible to become active members of the plan, and

(d) to prescribed persons.

37(2) – Subject to and in accordance with the regulations, if any of the persons referred to in subsection (1)(a), (b), (c) or (d) requests access to prescribed information, the administrator of the pension plan in relation to which the request was made must, at the option of the administrator, either

(a) allow the person to examine the prescribed information without charge at a prescribed place, or

(b) provide to the person, without charge, a copy of the prescribed information that the person has requested.

37(3) – Despite subsections (1) and (2)(a), if a person who is allowed to examine information in accordance with subsection (2)(a) instead requests, in writing, a copy of the information, the administrator must, within the prescribed period, provide a copy of the information to that person on payment of a charge not exceeding the reasonable costs incurred in making and providing the copy.

37(4) – Subject to and in accordance with the regulations, an administrator of a pension plan, after receiving a written request from

(a) a participating employer in the plan,

(b) a trade union whose membership includes or consists of members of the plan, or

(c) a prescribed person,

must provide to the requesting person or body a copy of any prescribed record on payment of a charge not exceeding the reasonable costs incurred in making and providing the copy.
37(5) – Unless otherwise directed by the Superintendent, an administrator is not required to comply with a person's request under subsection (2), (3) or (4) for information if the administrator has already provided that information to that person in compliance with a request made under one of those subsections within the 12 months immediately preceding receipt of the most current request.

Duty to Ensure Contributions Paid

40 – If a person becomes entitled or obligated to receive a lump sum payment or a transfer of benefits from a pension plan, the administrator must, in accordance with the regulations, make the payment or transfer.

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Order for Compliance

133(1) – If, in the opinion of the Superintendent,

(a) the plan documents of a pension plan do not comply with this Act or the regulations,
(b) the administrator has acted, is acting or is likely to act in breach of the Act or the regulations, or
(c) the plan is otherwise being administered not in compliance with this Act, the regulations or the plan documents,

the Superintendent may

(d) direct the administrator, a participating employer or any person, in writing,
    (i) to cease or refrain from committing the act or pursuing the course of conduct that constitutes the breach or non-compliance, and
    (ii) to perform such acts, including, without limitation, payment or repayment of money, as in the opinion of the Superintendent are necessary to remedy the situation,

or

(e) institute any action that could be initiated by
    (i) a member of the plan, or
    (ii) any other person entitled to a benefit under the plan.

133(2) – If, in the opinion of the Superintendent, an administrator, a participating employer or any other person with responsibilities under this Act is doing or about to do anything, in respect of a pension plan, that is contrary to safe and sound pension practices, the Superintendent may direct that person, in writing,

(a) to cease or refrain from doing that thing, or
(b) to do whatever the Superintendent considers necessary to remedy the situation.

133(3) – If, in the opinion of the Superintendent, a person has failed to comply with a direction made under this section, the Superintendent may apply to the Court for either or both of the following:

(a) an order directing the person to comply with the direction or restraining the person from violating the direction;
(b) an order directing the directors and officers of the person to cause the person to comply with or to cease violating the direction.

133(4) – On an application under subsection (3), the Court may make any order it considers appropriate.

Administrative Penalties

136(1) – If, in the opinion of the Superintendent, a person has

(a) contravened a prescribed provision of this Act,
(b) contravened a prescribed provision of the regulations,
(c) contravened this Act by failing to file, within the period required by the regulations for that filing, a record that is required to be filed under this Act,
(d) contravened this Act by failing to provide to an authorized person, within the period required by the regulations for that provision, information or a record requested by the authorized person,
(e) contravened this Act by failing to disclose information to persons within the period required by the regulations for that disclosure, or
(f) contravened this Act by failing to make contributions to the pension fund within the period required by the regulations for the making of those contributions,

the Superintendent may, by order, impose on the person an administrative penalty and, in that event, must give notice of that decision by serving a notice of administrative penalty on that person.

136(2) – If in the opinion of the Superintendent a corporation has committed a contravention referred to in subsection (1), the Superintendent may, in accordance with this section, impose an administrative penalty on an officer, director or agent of the corporation who, in the opinion of the Superintendent, directed, authorized, assented to, acquiesced in or participated in the contravention, whether or not the corporation is liable for or pays an administrative penalty.

136(3) – A notice of administrative penalty under subsection (1) or (2) must specify all of the following:

(a) the contravention;
(b) the amount of the administrative penalty;
(c) the date by which the person must pay the administrative penalty, which date must be not less than 30 days after the date on which the notice is served;
(d) the right of the person, within 30 days after the notice is served, to dispute one or both of the imposition and the amount of the administrative penalty;
(e) any prescribed information.

136(4) – An administrative penalty for a contravention must not exceed the amount prescribed for that contravention, and in any event must not exceed

(a) $250 000, in the case of a corporation or administrator, and
(b) $50 000, in the case of an individual other than an administrator.

136(8) – The pension fund must not be used to pay any portion of an administrative penalty imposed under this section.

Enforcement of Administrative Penalty

137(1) – If an administrative penalty is imposed under section 136, the following apply:

(a) if no notice of objection is served under section 146(1) within the period referred to in section 146(1), the penalty constitutes a debt payable by the person on whom the penalty is imposed;
(b) if a notice of objection is served under section 146(1) and a notice of reconsideration is served under section 146(2) that indicates that the decision to impose the penalty is confirmed, the penalty constitutes a debt payable by the person on whom the penalty is imposed;
(c) if a notice of objection is served under section 146(1) and a notice of reconsideration is served under section 146(2) that indicates that the decision to impose the penalty is

varied to change the amount of the penalty, the penalty set out in the notice of reconsideration constitutes a debt payable by the person on whom the penalty is imposed;

(d) if a notice of objection is served under section 146(1) and a notice of reconsideration is served under section 146(2) that indicates that the decision to impose the penalty is rescinded, the penalty ceases to apply to the person.

137(2) – If a person fails to pay an administrative penalty as required under section 136(7), the Superintendent may file with the Court a certified copy of the notice of administrative penalty, and on being filed with the Court under this subsection, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of the Court.

Offences

142 – Subject to section 140, a proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

143(1) – A person commits an offence who

(a) contravenes this Act or the regulations, or

(b) does any of the following contrary to or to avoid compliance with this Act or the regulations:

(i) destroys, alters, mutilates, secretes or otherwise disposes of records;

(ii) makes a false or misleading statement or entry in any record;

(iii) fails to state anything relevant in any records;

(iv) omits from any written or oral statement any material fact if the omission of that fact renders the statement misleading in the light of the circumstances in which it is made.

143(2) – The maximum penalty that may be imposed on a person who commits an offence under this Act is

(a) $500 000, in the case of a corporation or administrator, and

(b) $100 000, in the case of an individual other than an administrator.

143(3) – If a corporation commits an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence commits an offence, and is liable to a fine of not more than $100 000, whether or not the corporation has been prosecuted for the contravention.

143(4) – The pension fund must not be used to pay any portion of a fine imposed under this section.

143(5) – Without limiting section 133(3), if a person is convicted of an offence under this Act, the Court, in addition to any punishment it may impose, may order the person to comply with the provisions of this Act and the regulations.

What section sets out the defenses available to those individuals who allegedly breached those duties?

Limitation Periods

136(5) – The Superintendent must not serve a notice of administrative penalty under subsection (1) or (2) more than 3 years after the date on which the Superintendent first had knowledge of the facts on which the notice is based.

144(1) – A prosecution under this Act must not commence later than 3 years after the date when the Superintendent first had knowledge of the facts on which the prosecution is based.

144(2) – A statement by the Superintendent as to the date when the Superintendent first had knowledge of the facts on which the prosecution is based is admissible in evidence in respect of

the prosecution as proof of the facts in the statement without proof of the appointment or signature of the Superintendent.

British Columbia

Corporate Law

What department of the government has oversight of the corporation statute?

Ministry of Citizens' Services
https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/citizens-services

What statute governs the incorporation of business corporations in the jurisdiction?

Business Corporations Act, SBC 2002, c. 57
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02057_00

What sections impose duties on the corporation's directors and officers?

Duty to Manage

136(1) – The directors of a company must, subject to this Act, the regulations and the memorandum and articles of the company, manage or supervise the management of the business and affairs of the company.
136(2) – Without limiting section 146, a limitation or restriction on the powers or functions of the directors is not effective against a person who does not have knowledge of the limitation or restriction.
137(1) – Subject to subsection (1.1) but despite any other provision of this Act, the articles of a company may transfer, in whole or in part, the powers of the directors to manage or supervise the management of the business and affairs of the company to one or more other persons.
137(1.1) – A provision of the articles transferring powers of the directors to manage or supervise the management of the business and affairs of the company is effective

(a) if the provision is included in the articles at the time of the company's recognition or if the company resolved, by special resolution, to add that provision to the articles, and
(b) if the provision clearly indicates, by express reference to this section or otherwise, the intention that the powers be transferred to the proposed transferee.

137(2) – If the whole or any part of the powers of the directors is transferred in the manner contemplated by subsection (1),

(a) the persons to whom those powers are transferred have all the rights, powers, duties and liabilities of the directors of the company, whether arising under this Act or otherwise, in relation to and to the extent of the transfer, including any defences available to the directors, and
(b) the directors are relieved of their rights, powers, duties and liabilities to the same extent.

137(3) – If and to the extent that the articles transfer to a person a right, power, duty or liability that is, under this Act, given to or imposed on a director or directors, the reference in this Act or the regulations to a director or directors in relation to that right, power, duty or liability is deemed to be a reference to the person.

Duty of Care and Good Faith

142(1) – A director or officer of a company, when exercising the powers and performing the functions of a director or officer of the company, as the case may be, must

(a) act honestly and in good faith with a view to the best interests of the company,
(b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
(c) act in accordance with this Act and the regulations, and
(d) subject to paragraphs (a) to (c), act in accordance with the memorandum and articles of the company.

142(2) – This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors and officers of a company.

Duty to Keep Accurate Records and Make Available for Inspection

42(1) – Subject to section 43, a company must keep specified records at its records office.

46(1) – The following persons may, without charge, inspect all of the records that a company is required to keep under section 42:

(a) a current director of the company;
(b) if and to the extent permitted by the articles,
(i) a shareholder of the company, or
(ii) any other person.

46(2) – A former director of a company and, if and to the extent permitted by the articles that were in effect immediately before the person ceased to be a shareholder, a former shareholder of a company may, without charge, inspect all of the records that the company is required to keep under section 42 that relate to the period when that person was a director or shareholder, as the case may be.

*Note: For more detailed restrictions on which records may be inspected, please see Division 5 of the *Business Corporations Act.*

Duty to Prepare, Approve, and Provide Financial Statements

198(2) – Subject to section 199 and subsection (3) of this section, unless relieved under section 200 from their obligation to do so, the directors of a company must, on or before each annual reference date, produce and publish, in accordance with subsection (4) of this section,

(a) financial statements in respect of the latest completed financial year of the company, even if that financial year is the company's first financial year.

199(1) – The directors of a company must ensure that, before financial statements referred to in section 198 are published, the financial statements are

(a) approved by the directors, and
(b) signed by one or more directors to confirm that the approval required by paragraph (a) of this subsection was obtained.

199(2) – The directors must ensure that financial statements published under section 198

(a) have attached any auditor's report made under section 212 (1) (a) on those financial statements, and
(b) do not purport to be audited unless those financial statements have, in fact, been audited and an auditor's report has been made.

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

Inspection of Records

46(1) – The following persons may, without charge, inspect all of the records that a company is required to keep under section 42:

(a) a current director of the company;
(b) if and to the extent permitted by the articles,
    (i) a shareholder of the company, or
    (ii) any other person.

Derivative Action

232(1) – In this section and section 233,
"complainant" means, in relation to a company, a shareholder or director of the company;
"shareholder" has the same meaning as in section 1 (1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.
232(2) – A complainant may, with leave of the court, prosecute a legal proceeding in the name and on behalf of a company

(a) to enforce a right, duty or obligation owed to the company that could be enforced by the company itself, or
(b) to obtain damages for any breach of a right, duty or obligation referred to in paragraph (a) of this subsection.

232(3) – Subsection (2) applies whether the right, duty or obligation arises under this Act or otherwise.
232(4) – With leave of the court, a complainant may, in the name and on behalf of a company, defend a legal proceeding brought against the company.
233(1) – The court may grant leave under section 232 (2) or (4), on terms it considers appropriate, if

(a) the complainant has made reasonable efforts to cause the directors of the company to prosecute or defend the legal proceeding,
(b) notice of the application for leave has been given to the company and to any other person the court may order,
(c) the complainant is acting in good faith, and
(d) it appears to the court that it is in the best interests of the company for the legal proceeding to be prosecuted or defended.

233(2) – Nothing in this section prevents the court from making an order that the complainant give security for costs.
233(3) – While a legal proceeding prosecuted or defended under this section is pending, the court may,

(a) on the application of the complainant, authorize any person to control the conduct of the legal proceeding or give any other directions for the conduct of the legal proceeding, and
(b) on the application of the person controlling the conduct of the legal proceeding, order, on the terms and conditions that the court considers appropriate, that the company pay to the person controlling the conduct of the legal proceeding interim costs in the amount and for the matters, including legal fees and disbursements, that the court considers appropriate.

233(4) – On the final disposition of a legal proceeding prosecuted or defended under this section, the court may make any order it considers appropriate, including an order that

(a) a person to whom costs are paid under subsection (3) (b) repay to the company some or all of those costs,
(b) the company or any other party to the legal proceeding indemnify
    (i) the complainant for the costs incurred by the complainant in prosecuting or defending the legal proceeding, or
    (ii) the person controlling the conduct of the legal proceeding for the costs incurred by the person in controlling the conduct of the legal proceeding, or
(c) the complainant or the person controlling the conduct of the legal proceeding indemnify one or more of the company, a director of the company and an officer of the company for expenses, including legal costs, that they incurred as a result of the legal proceeding.

233(5) – No legal proceeding prosecuted or defended under this section may be discontinued, settled or dismissed without the approval of the court.

Oppression Remedy

227(1) – For the purposes of this section, "shareholder" has the same meaning as in section 1 (1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.

227(2) – A shareholder may apply to the court for an order under this section on the ground

(a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
(b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

227(3) – On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to subsection (4) of this section, make any interim or final order it considers appropriate, including an order

(a) directing or prohibiting any act,
(b) regulating the conduct of the company's affairs,
(c) appointing a receiver or receiver manager,
(d) directing an issue or conversion or exchange of shares,
(e) appointing directors in place of or in addition to all or any of the directors then in office,
(f) removing any director,
(g) directing the company, subject to subsections (5) and (6), to purchase some or all of the shares of a shareholder and, if required, to reduce its capital in the manner specified by the court,
(h) directing a shareholder to purchase some or all of the shares of any other shareholder,
(i) directing the company, subject to subsections (5) and (6), or any other person, to pay to a shareholder all or any part of the money paid by that shareholder for shares of the company,
(j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,
(k) varying or setting aside a resolution,

(l) requiring the company, within a time specified by the court, to produce to the court or to an interested person financial statements or an accounting in any form the court may determine,
(m) directing the company, subject to subsections (5) and (6), to compensate an aggrieved person,
(n) directing correction of the registers or other records of the company,
(o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,
(p) directing that an investigation be made under Division 3 of this Part,
(q) requiring the trial of any issue, or
(r) authorizing or directing that legal proceedings be commenced in the name of the company against any person on the terms the court directs.

227(4) – The court may make an order under subsection (3) if it is satisfied that the application was brought by the shareholder in a timely manner.

227(5) – If an order is made under subsection (3) (g), (i) or (m), the company must pay to a person the full amount payable under that order unless there are reasonable grounds for believing that

(a) the company is insolvent, or
(b) the payment would render the company insolvent.

227(6) – If reasonable grounds exist for believing that subsection (5) (a) or (b) applies,

(a) the company is prohibited from paying the person the full amount of money to which the person is entitled,
(b) the company must pay to the person as much of the amount as is possible without causing a circumstance set out in subsection (5) to occur, and
(c) the company must pay the balance of the amount as soon as the company is able to do so without causing a circumstance set out in subsection (5) to occur.

227(7) – If an order is made under subsection (3) (o), Part 10 applies.

General Rules When Applying for Remedy

429(1) – A legal proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

233(6) – No application made or legal proceeding prosecuted or defended under section 232 or this section may be stayed or dismissed merely because it is shown that an alleged breach of a right, duty or obligation owed to the company has been or might be approved by the shareholders of the company, but evidence of that approval or possible approval may be taken into account by the court in making an order under section 232 or this section.

228(1) – In this section, "complainant" means, in relation to a company referred to in subsection (2), a shareholder of the company or any other person whom the court considers to be an appropriate person to make an application under this section.

228(2) – If a company or any director, officer, shareholder, employee, agent, auditor, trustee, receiver, receiver manager or liquidator of a company contravenes or is about to contravene a provision of this Act or the regulations or of the memorandum, notice of articles or articles of the company, a complainant may, in addition to any other rights that that person might have, apply to the court for an order that the person who has contravened or is about to contravene the provision comply with or refrain from contravening the provision.

228(3) – On an application under this section, the court may make any order it considers appropriate, including an order

(a) directing a person referred to in subsection (2) to comply with or to refrain from contravening a provision referred to in that subsection,
(b) enjoining the company from selling or otherwise disposing of property, rights or interests, or from receiving property, rights or interests, or
(c) requiring, in respect of a contract made contrary to section 33 (1), that compensation be paid to the company or to any other party to the contract.

Offence – Misleading Statement

427(1) – Subject to subsection (3), a person who makes or assists in making a statement that is included in a record that is required or permitted to be made by or for the purposes of this Act or the regulations commits an offence if the statement
(a) is, at the time and in the light of the circumstances under which it is made, false or misleading in respect of any material fact, or
(b) omits any material fact, the omission of which makes the statement false or misleading.

427(2) – If a corporation or limited liability company commits an offence under subsection (1), any director or officer of the corporation, or any manager of the limited liability company, who, subject to subsection (3), authorizes, permits or acquiesces in the commission of the offence also commits an offence and is liable on summary conviction to a fine of not more than $10 000, whether or not the corporation or limited liability company is prosecuted or convicted.

Offence – Failure to Maintain Records and Make Available for Inspection

426(1) – A person commits an offence who
(a) contravenes section 42 [duty to maintain records]

426(5) – It is an offence for a person who maintains the records office for the company or, in the case of a central securities register that is kept at a location other than the company's records office, for the person who has custody or control of the company's central securities register, to refuse, without reasonable excuse,
(a) to permit a person to inspect any record that the person is entitled to inspect and for which the appropriate fee, if any, has been tendered, or
(b) to provide, within the meaning of section 48 (3) or 119.91 (3), to a person a copy of any record that the person is entitled to receive a copy of and for which the appropriate fee, if any, has been tendered.

Offence – Failure to Prepare, Approve and Provide Financial Statements

426(1) – A person commits an offence who
(a) contravenes section 199 [duty to approve financial statements]

Penalties for Offences

428(1) – A person who commits an offence under section 426 (1) (a)…or 426(5) is liable
(a) in the case of a person other than an individual, to a fine of not more than $5 000, or
(b) in the case of an individual, to a fine of not more than $2 000.

428(2) – A person who commits an offence under section 427 (1) is liable,
(a) in the case of a person other than an individual, to a fine of not more than $25 000, or
(b) in the case of an individual, to a fine of not more than $10 000.

Order for Compliance

429(2) – If a person is convicted of an offence under this Act, the court may, in addition to any penalty the court may impose for the offence, order the person to comply with the provisions of this Act.

429(3) – A person who contravenes an order under subsection (2) commits an offence and is liable on conviction to the penalties provided for the offence in relation to which the order was made.

What sections set out the defenses officers and directors may assert against alleged violations of those duties?

Defence – General

234 – If, in a legal proceeding against a director, officer, receiver, receiver manager or liquidator of a company, the court finds that that person is or may be liable in respect of negligence, default, breach of duty or breach of trust, the court must take into consideration all of the circumstances of the case, including those circumstances connected with the person's election or appointment, and may relieve the person, either wholly or partly, from liability, on the terms the court considers necessary, if it appears to the court that, despite the finding of liability, the person has acted honestly and reasonably and ought fairly to be excused.

Defence – Breach of Duty of Care and Good Faith

157(1) – A director of a company has complied with the director's duties under 142 (1) if the director relied, in good faith, on

(a) financial statements of the company represented to the director by an officer of the company or in a written report of the auditor of the company to fairly reflect the financial position of the company,
(b) a written report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by that person,
(c) a statement of fact represented to the director by an officer of the company to be correct, or
(d) any record, information or representation that the court considers provides reasonable grounds for the actions of the director, whether or not
    (i) the record was forged, fraudulently made or inaccurate, or
    (ii) the information or representation was fraudulently made or inaccurate.

157(2) – A director of a company is not liable under section 154 if the director did not know and could not reasonably have known that the act done by the director or authorized by the resolution voted for or consented to by the director was contrary to this Act.

Defence – Offence of Failure to Keep Accurate Records and Make Available for Inspection

426(5) – A person who contravenes this section [allowing inspection of records] is not guilty of an offence if they had reasonable cause for the contravention.

Defence – Offence of Misleading Statement

427(3) – No person is guilty of an offence under section 427(1) [misleading statement] if that person

(a) did not know that the statement was false or misleading, and
(b) with the exercise of reasonable diligence, could not have known that the statement was false or misleading.

Indemnification for Costs

160 – Subject to section 163, a company may do one or both of the following:

(a) indemnify an eligible party against all eligible penalties to which the eligible party is or may be liable;

(b) after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by an eligible party in respect of that proceeding.

Limitation Periods

430(1) – A legal proceeding for an offence under this Act may not be commenced more than 3 years after the commission of the offence.

Securities Law

What commission or department is responsible for securities law?

BC Securities Commission
https://www.bcsc.bc.ca/

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

Securities Act, RSBC 1996, c. 418
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96418_01

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/5-ongoing-requirements-for-issuers-insiders/current/51-102/51102-ni-july-25-2023

- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/5-ongoing-requirements-for-issuers-insiders/current/51-101/51101-ni-july-25-2023

Prospectus

Securities Act

63(1) – A prospectus must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed.
63(2) – A preliminary prospectus must substantially comply with the requirements of this Act and the regulations respecting the content of a prospectus.

Continuous Disclosure

Securities Act

85 – An issuer must, in accordance with the regulations,
(a) provide prescribed periodic disclosure about its business and affairs,
(b) provide disclosure of a material change, and
(c) provide other prescribed disclosure.

Financial Statements

National Instrument 51-102

4.1(1) – A reporting issuer must file annual financial statements that include

(a) A statement of comprehensive income, changes in equity, and a statement of cash flows for
    i. The most recently completed financial year
    ii. The financial year immediately preceding the most recently completed financial year, if any
(b) A statement of financial position as at the end of each of those periods

4.1(2) – Annual financial statements must be audited.

4.2 – The filing deadline for audited annual financial statements is
(a) For non-venture issuers, the 90th day after the end of its most recently completed financial year.
(b) For venture issuers, the 120th day after the end of its most recently completed financial year.

4.5(1) – The annual financial statements must be approved by the board of directors before filing.

4.3(1) – A reporting issuer must file an interim financial report for each interim period ended after it became a reporting issuer.

1 – "Interim period" = a period commencing on the first day of the financial year and ending 9, 6, or 3 months before the end of the financial year

4.3(3) – If an auditor has not performed a review of an interim financial report, the report must be accompanied by a notice indicating that it has not been reviewed by an auditor.

4.4 – The filing deadline for interim financial reports is
(c) For non-venture issuers, the 45th day after the end of the interim period
(d) For venture issuers, the 60th day after the end of the interim period

4.5(1) – The interim financial report must be approved by the board of directors before filing.

Management's Discussion & Analysis

National Instrument 51-102

5.1(1) – A reporting issuer must file Management's Discussion & Analysis relating to its annual financial statements and each interim financial report required under Part 4.

5.1(2) – The filing deadline is on or before the earlier of the filing deadline or the actual filing of the annual or interim financial statements, as applicable.

5.4(1) – Issuer must disclose in its annual Management's Discussion & Analysis the designation and number of each class of voting or equity securities (or securities convertible to voting/equity securities) for which there are securities outstanding

5.5(1) – The annual and interim Management's Discussion & Analysis must be approved by the board of directors before being filed.

5.8(2) – A reporting issuer must discuss in its Management's Discussion & Analysis any updates to FLI – events and circumstances likely to cause actual results to differ materially from material FLI relating to a period that is not yet complete that the issuer previously disclosed to the public.

5.8(3) – Sub (2) does not apply if the reporting issuer included the information in a news release and discloses in the Management's Discussion & Analysis that the news release is available on SEDAR.

5.8(4) – Issuer must discuss in its Management's Discussion & Analysis material differences between (a) actual results for the annual or interim period to which the Management's Discussion & Analysis relates, and (b) any previously disclosed FOFI or financial outlook for that period.

Annual Information Form

National Instrument 51-102

6.1 – A reporting issuer that is not a venture issuer must file an annual information form.
6.2 – Filing deadline is on or before the 90th day after the end of the issuer's most recently completed financial year.

Material Changes

National Instrument 51-102

1.3 – "Material change" means

(e) a change in the business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer, or

(f) A decision to implement a change made by the board or persons acting in a similar capacity or senior management who believe that confirmation of the board or persons acting in similar capacity is probable.

7.1(1) – If a material change occurs in the affairs of a reporting issuer, the issuer must:

(e) Immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change

(f) As soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.

7.1(2) – Reporting issuer may mark filed material change report as confidential, with written reasons for non-disclosure, if:

(e) In the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by sub (1) would be unduly detrimental to the interests of the reporting issuer, or

(f) The material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer.

7.1(5) – If a report has been filed under sub (2), the issuer must advise the regulator in writing every 10 days if it believes the report should continue to remain confidential, until the material change is generally disclosed OR the board rejects the decision.

7.1(7) – An issuer must promptly generally disclose the material change if the issuer becomes aware of reasonable grounds to believe that persons are selling securities of the reporting issuer with knowledge of the change.

Making Filings Available

Securities Act

169(1) – Unless otherwise indicated, records required by this Act or by the regulations to be filed must be filed by depositing them with the commission.

169(2) – Subject to the regulations, records required by this Act or by the regulations to be filed may be filed electronically in any form specified by the executive director.

169(3) – Subject to subsection (4), all records filed under this Act must be made available for public inspection during normal business hours.

169(4) – The commission may hold in confidence all or part of a record required to be filed under this Act if the commission considers that

(a) a person whose information appears in the record would be unduly prejudiced by disclosure of the information, and

(b) the person's privacy interest outweighs the public's interest in having the information disclosed.

Misleading Disclosure

Securities Act

168.1(1) – A person must not

(a) make a statement in evidence or submit or give information to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading, or

(b) make a statement or provide information in any record filed, provided, delivered or sent under this Act, or in relation to a service provided by the commission, that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

Forward-Looking Information

National Instrument 51-102

"Forward-looking information" = disclosure regarding possible events, conditions or financial performance, including future-oriented financial information (FOFI).

"Future-oriented financial information" (FOFI) = presented in format of statement of financial position, comprehensive income or cash flows

"Financial outlook" = not presented in format of statement of financial position, income or cash flows

4A.1 – This Part applies to forward-looking information (FLI) disclosed by a reporting issuer other than orally.

4A.2 – Reporting issuer must not disclose FLI unless the issuer has a reasonable basis for the FLI.

4A.3 – A reporting issuer that discloses material forward-looking information must include disclosure that

(i) Identifies forward-looking information as such

(j) Cautions users of FLI that actual results may vary from the FLI, and identifies material risk factors that could cause actual results to differ materially from the FLI

(k) States the material factors or assumptions used to develop FLI

(l) Describes the issuer's policy for updating FLI if it includes procedures in addition to those in 5.8.

4B.1 – This part applies to FOFI or a financial outlook that is disclosed by a reporting issuer, other than orally.

4B.2 – Must not disclose FOFI or a financial outlook unless based on assumptions that are reasonable in the circumstances. Must be limited to a period for which the information can be reasonably estimated, and use the accounting policies the issuer expects to use for the period covered.

4B.3 – Must also disclose date management approved the FOFI or financial outlook, explain the purpose of the FOFI or financial outlook, and caution readers that the information may not be appropriate for other purposes.

Further Information

Securities Act

90(1) – The commission or the executive director may require a director, an officer, a promoter or a control person of an issuer, within the time the commission or executive director specifies, to submit information.

90(2) – Information submitted under subsection (1) must be in the required form.

Aiding and Abetting

Securities Act

168.01 – A person must not do or omit to do anything the person knows or reasonably should know aids, abets or counsels a contravention of the Act, the regulations or a decision of the commission or the executive director.

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Directors' and Officers' Liability for Company Violation

Securities Act

168.2 (1) – If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

168.2(2) – If an investment fund contravenes a provision of this Act or of the regulations, or fails to comply with a decision, the investment fund manager also contravenes the provision or fails to comply with the decision, as the case may be.

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Order of Commission

Securities Act

161(1) – If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

(a) that a person comply with or cease contravening, and that the directors and officers of the person cause the person to comply with or cease contravening,
  (i) a provision of this Act or the regulations,
  (ii) a decision, whether or not the decision has been filed under section 163,
  (iii) a bylaw, rule, or other regulatory instrument or policy or a direction, decision or similar determination made by a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, as the case may be, that has been recognized by the commission under section 24, or
  (iv) a bylaw, rule, or other regulatory instrument or policy or a direction, decision or similar determination made by
    (A) a benchmark administrator that has been designated for the purposes of a regulation referred to in section 183 (2.2), or
    (B) an information processor that has been designated for the purposes of a regulation referred to in section 183 (2.3);

(b) that
  (i) all persons,
  (ii) the person or persons named in the order, or
  (iii) one or more classes of persons

cease trading in, or be prohibited from purchasing, any securities or derivatives, a specified security or derivative or a specified class of securities or class of derivatives;

(c) that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person;
(d) that a person
    (i) resign any position that the person holds as a director or officer of an issuer or registrant,
    (ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,
    (iii) is prohibited from becoming or acting as a registrant or promoter,
    (iv) is prohibited from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets,
    (v) is prohibited from engaging in promotional activities by or on behalf of
        (A) an issuer, security holder or party to a derivative, or
        (B) another person that is reasonably expected to benefit from the promotional activity,
    (vi) is prohibited from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person,
    (vii) is prohibited from voting a security or exercising a right attaching to a security or a derivative, or
    (viii) is prohibited from engaging in any activity in relation to the administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark;
(e) that a person
    (i) is prohibited from disseminating to the public, or authorizing the dissemination to the public, of any information or record of any kind that is described in the order,
    (ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the commission or the executive director considers must be disseminated, or
    (iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;
(f) that a registration or recognition be suspended, cancelled or restricted or that conditions, restrictions or requirements be imposed on a registration or recognition;
(g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
(h) that a person referred to in subsection (7) submit to a review of its practices and procedures;
(i) that a person referred to in subsection (7) make changes to its practices and procedures;
(j) that a person be reprimanded.

Administrative Penalties

162(1) – If the commission, after a hearing,
(a) determines that a person has contravened
    (i) subject to subsection (2), a provision of this Act or of the regulations, or
    (ii) a decision of the commission, the executive director or a designated organization, whether or not the decision has been filed under section 163, and
(b) considers it to be in the public interest to make the order,

the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention.

162(2) – If the commission, after a hearing,

(a) determines that a person has contravened section 57.7, and

(b) considers it to be in the public interest to make the order,

the commission may order the person to pay the commission an administrative penalty of not more than $5 million for each contravention.

162(3) – If the commission, after a hearing, determines that a person named in a summons or demand under section 144 (1) has failed or refused

(a) to attend,

(b) to take an oath,

(c) to answer questions,

(d) to preserve records and things or classes of records and things in the custody, possession or control of the person, or

(e) to provide information or to produce the records and things or classes of records and things in the custody, possession or control of the person,

the commission may, if the commission considers it to be in the public interest to make the order, order the person to pay the commission an administrative penalty of not more than $1 million.

162.01 – If, based on information obtained from a review, investigation or any other source, the executive director

(a) considers that a person has contravened

(i) a prescribed provision of this Act,

(ii) a provision of the regulations, or

(iii) a decision of the commission or the executive director, whether or not the decision has been filed under section 163, and

(b) considers it to be in the public interest,

the executive director may give written notice to a person requiring the person to pay an administrative penalty.

162.02(1) – In determining the amount of an administrative penalty imposed on a person by notice under section 162.01, the executive director must consider the following:

(a) the person's past conduct;

(b) the seriousness of the conduct;

(c) factors that mitigate the person's conduct;

(d) the need to demonstrate the consequences of inappropriate conduct to those who access the capital markets;

(e) the need to deter those who participate in the capital markets from engaging in inappropriate conduct;

(f) orders made by the commission in similar circumstances in the past;

(g) any other matter relevant to the public interest.

162.02(2) – An administrative penalty for which a notice has been issued to a person under section 162.01 must not exceed,

(a) in the case of an individual, $100 000 for each contravention set out in the notice, or

(b) in the case of a person that is not an individual, $500 000 for each contravention set out in the notice.

Application to Court

Securities Act

157(0.1) – The commission may apply to the Supreme Court for one or more of the orders referred to in subsection (1) if the commission considers that it is in the public interest to do so and that a person

(a) has contravened or is contravening a provision of this Act or of the regulations,
(b) has failed to comply with or is not complying with a decision, or
(c) has been convicted of an offence under the Criminal Code arising from a transaction, business or course of conduct related to securities or derivatives.

157(1) – In addition to any other powers it may have, the commission may, in the circumstances set out in subsection (0.1), apply to the Supreme Court for one or more of the following orders:

(a) an order that
    (i) the person comply with or cease contravening the provision or decision, and
    (ii) the directors and officers of the person cause the person to comply with or to cease contravening the provision or decision;
(b) an order that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
(c) an order setting aside a transaction relating to trading in securities or derivatives;
(d) an order that a security or derivative be issued or cancelled;
(e) an order that a security or derivative be purchased, disposed of or exchanged;
(f) an order prohibiting the voting of a security or the exercise of a right attaching to a security or derivative;
(g) an order appointing a director of the person that is the subject of the application;
(h) an order that the person repay a holder of a security or a derivative money paid by the holder for the security or derivative;
(i) an order that the person compensate or make restitution to any other person;
(j) an order that the person pay general or punitive damages to any other person;
(k) an order that the person correct a record;
(l) an order that the person rectify any contravention of this Act, or the regulations, to the extent that rectification is possible.

157(2) – On an application under subsection (1), the Supreme Court may make the order applied for and any other order the court considers appropriate.

157(3) – An order may be made under this section even though a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act

131(1) – If a prospectus contains a misrepresentation, a person who purchases a security offered by the prospectus during the period of distribution

(a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase, and
(b) has a right of action for damages against
    (i) the issuer or a selling security holder on whose behalf the distribution is made,
    (ii) every underwriter that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made,

(iii) every director of the issuer at the time the prospectus was filed,
(iv) every person whose consent to disclosure of information in the prospectus has been filed, and
(v) every person who signed the prospectus.

131(2) – A person referred to in subsection (1) (b) (iv) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person.

131(3) – If the person referred to in subsection (1) purchased the security from a person or underwriter referred to in subsection (1) (b) (i) or (ii) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against that person or underwriter, in which case the purchaser has no right of action for damages against that person under subsection (1).

131(14) – The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.

131(15) – If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a prospectus, the misrepresentation is deemed to be contained in the prospectus.

During Distribution – Action for Damages for Misrepresentation in Prescribed Disclosure Document

Securities Act

132.1(1) – If a prescribed disclosure document contains a misrepresentation, a purchaser who purchases a security offered by the disclosure document

(a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase, and
(b) has a right of action for damages against
(i) the issuer,
(ii) every director of the issuer at the date of the disclosure document,
(ii.1) every person whose consent to the disclosure of information in the disclosure document was filed, and
(iii) every person who signed the disclosure document.

132.1(2) – The purchaser may elect to exercise a right of rescission against the issuer, in which case the purchaser has no right of action for damages against the issuer.

132.1(11) – The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.

132.1(12) – If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a disclosure document, the misrepresentation is deemed to be contained in the disclosure document.

After Distribution – Action for Damages for Misrepresentation

Securities Act

140.3(1) – Where a responsible issuer or a person with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer,
(b) each director of the responsible issuer at the time the document was released,
(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document,

(d) each influential person, and each director and officer of an influential person, who knowingly influenced
    (i) the responsible issuer or any person acting on behalf of the responsible issuer to release the document, or
    (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document, and
(e) each expert where
    (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
    (iii) if the document was released by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

140.3(2) – If a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer,
(b) the person who made the public oral statement,
(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement,
(d) each influential person, and each director and officer of the influential person, who knowingly influenced
    (i) the person who made the public oral statement to make the public oral statement, or
    (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement, and
(e) each expert where
    (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
    (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
    (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

140.3(3) – If an influential person or a person with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized,

permitted or acquiesced in the release of the document or the making of the public oral statement,

(b) the person who made the public oral statement,

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,

(d) the influential person,

(e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and

(f) each expert where

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

140.3(4) – Where a responsible issuer fails to make a timely disclosure, a person who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against

(a) the responsible issuer,

(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure, and

(c) each influential person, and each director and officer of an influential person, who knowingly influenced

(i) the responsible issuer or any person acting on behalf of the responsible issuer in the failure to make timely disclosure, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

140.3(5) – In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

140.3(6) – In an action under this section,

(a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation, and

(b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

140.3(7) – In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

140.4(1) – In an action under section 140.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person is not liable, subject to subsection (2), unless the plaintiff proves that the person

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation,
(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation, or
(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

140.4(2) – A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 140.3 in relation to an expert.

140.4(3) – In an action under section 140.3 in relation to a failure to make timely disclosure, a person is not liable, subject to subsection (4), unless the plaintiff proves that the person
(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change,
(b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change, or
(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

140.4(4) – A plaintiff is not required to prove a matter set out in subsection (3) in an action under section 140.3 in relation to
(a) a responsible issuer,
(b) an officer of a responsible issuer,
(c) an investment fund manager, or
(d) an officer of an investment fund manager.

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Offence of Misleading Disclosure

Securities Act

168.1(2) – A person does not contravene subsection (1) [misleading disclosure] if the person
(a) did not know, and
(b) in the exercise of reasonable diligence, could not have known

that the statement or information was false or misleading.

Defences – Misrepresentation in Prospectus

Securities Act

131(4) – A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.

131(5) – A person is not liable under subsection (1) if the person proves that
(a) the prospectus was filed without the person's knowledge or consent and that, on becoming aware of its filing, the person gave reasonable general notice that it was so filed,
(b) after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus, the person withdrew the person's consent to it and gave reasonable general notice of the withdrawal and the reason for it,
(c) with respect to any part of the prospectus purporting
    (i) to be made on the authority of an expert, or

(ii) to be a copy of, or an extract from, a report, opinion or statement of an expert,

the person had no reasonable grounds to believe and did not believe that

(iii) there had been a misrepresentation, or

(iv) the relevant part of the prospectus

(A) did not fairly represent the report, opinion or statement of the expert, or

(B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert,

(d) with respect to any part of the prospectus purporting

(i) to be made on the person's own authority as an expert, or

(ii) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert,

but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert,

(iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the prospectus fairly represented the person's report, opinion or statement as an expert, or

(iv) on becoming aware that the relevant part of the prospectus did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that

(A) the person's report, opinion or statement was not fairly represented, and

(B) the person would not be responsible for that part of the prospectus, or

(e) with respect to a false statement

(i) purporting to be a statement made by an official person, or

(ii) contained in what purports to be a copy of, or an extract from, a public official document,

it was a correct and fair representation of the statement or copy of, or an extract from, the document, and the person had reasonable grounds to believe and did believe that the statement was true.

131(6) – A person is not liable under subsection (1) if the person proves that, with respect to any part of the prospectus purporting

(a) to be made on the person's own authority as an expert, or

(b) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

131(7) – A person is not liable under subsection (1) if the person proves that, with respect to any part of the prospectus not purporting

(a) to be made on the authority of an expert, and

(b) to be a copy of, or an extract from, a report, opinion or statement of an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

131(8) – Subsections (5) to (7) do not apply to the issuer or a selling security holder.

131(9) – An underwriter is not liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter.

131(10) – In an action for damages under subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.
131(11) – The liability of all persons referred to in subsection (1) (b) is joint and several as between themselves with respect to the same cause of action.
131(13) – The amount recoverable by a plaintiff under this section must not exceed the price at which the securities purchased by the plaintiff were offered to the public.
133 – In determining what is a reasonable investigation or what are reasonable grounds for belief for the purposes of sections 131 and 132, the standard of reasonableness must be that required of a prudent person in the circumstances of the particular case.

Defences – Misrepresentation in Offering Memorandum

Securities Act

132.1(2.1) – A person referred to in subsection (1) (b) (ii.1) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person.
132.1(3) – A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.
132.1(4) – A person is not liable under subsection (1) if the person proves that

(a) the disclosure document was delivered to purchasers without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the issuer that it was delivered without the person's knowledge or consent,
(b) on becoming aware of any misrepresentation in the disclosure document, the person withdrew the person's consent to the disclosure document and gave written notice to the issuer of the withdrawal and the reason for it,
(c) with respect to any part of the disclosure document purporting
    (i) to be made on the authority of an expert, or
    (ii) to be a copy of, or an extract from, a report, an opinion or a statement of an expert,

    the person had no reasonable grounds to believe and did not believe that
    (iii) there had been a misrepresentation, or
    (iv) the relevant part of the disclosure document
        (A) did not fairly represent the report, opinion or statement of the expert, or
        (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert, or
(d) with respect to any part of the disclosure document purporting
    (i) to be made on the person's own authority as an expert, or
    (ii) to be a copy of, or an extract from, the person's own report, opinion, or statement as an expert,

    but that contained a misrepresentation attributable to a failure to fairly represent the person's report, opinion or statement as an expert,
    (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the disclosure document fairly represented the person's report, opinion or statement as an expert, or
    (iv) on becoming aware that the relevant part of the disclosure document did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and the issuer that

(A) the person's report, opinion or statement was not fairly represented, and
(B) the person would not be responsible for that part of the disclosure document.

132.1(4.1) – A person is not liable under subsection (1) if the person proves that, with respect to any part of the disclosure document purporting

(a) to be made on the person's own authority as an expert, or
(b) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

132.1(5) – A person is not liable under subsection (1) if the person proves that, with respect to any part of a disclosure document not purporting

(a) to be made on the authority of an expert, or
(b) to be a copy of, or an extract from, a report, opinion or statement of an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

132.1(6) – Subsections (4) and (5) do not apply to the issuer.

132.1(7) – In an action for damages under subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.

132.1(8) – The liability of all persons referred to in subsection (1) (b) is joint and several as between themselves with respect to the same cause of action.

132.1(9) – A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

132.1(10) – The amount recoverable by a plaintiff under this section must not exceed the price at which the securities were offered under the disclosure document.

133 – In determining what is a reasonable investigation or what are reasonable grounds for belief for the purposes of sections 131 and 132, the standard of reasonableness must be that required of a prudent person in the circumstances of the particular case.

Defences – Liability After Distribution

Securities Act

140.3(5) – A person is not liable in an action under section 140.3 in relation to a misrepresentation or a failure to make timely disclosure if that person proves that the plaintiff acquired or disposed of the issuer's security

(a) with knowledge that the document or public oral statement contained a misrepresentation, or
(b) with knowledge of the material change.

140.3(6) – A person is not liable in an action under section 140.3 in relation to

(a) a misrepresentation if that person proves that
    (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation, or

(b) a failure to make timely disclosure if that person proves that

(i) before the failure to make timely disclosure first occurred, the person conducted or caused to be conducted a reasonable investigation, and

(ii) the person had no reasonable grounds to believe that the failure to make timely disclosure would occur.

140.3(7) – In determining whether an investigation was reasonable under subsection (6), or whether any person is guilty of gross misconduct under subsection (1) or (3), the court must consider all relevant circumstances, including

(a) the nature of the responsible issuer,

(b) the knowledge, experience and function of the person,

(c) the office held, if the person was an officer,

(d) the presence or absence of another relationship with the responsible issuer, if the person was a director,

(e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations,

(f) the reasonableness of reliance by the person on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts,

(g) the period within which disclosure was required to be made under the applicable law,

(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert,

(i) the extent to which the person knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement,

(j) in the case of a misrepresentation, the role and responsibility of the person in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and

(k) in the case of a failure to make timely disclosure, the role and responsibility of the person involved in a decision not to disclose the material change.

140.3(8) – A person is not liable in an action under section 140.3 in respect of a failure to make timely disclosure if

(a) the person proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the commission under section 85 (b),

(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,

(c) in the case where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,

(d) the person or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and

(e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

140.3(13) – A person, other than an expert, is not liable in an action under section 140.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person proves that

(a) the person did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

140.3(14) – An expert is not liable in an action under section 140.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

140.3(15) – A person is not liable in an action under section 140.3 in respect of a misrepresentation in a document, other than a document required to be filed, if the person proves that, at the time of release of the document, the person did not know and had no reasonable grounds to believe that the document would be released.

140.3(16) – A person is not liable in an action under section 140.3 for a misrepresentation in a document or a public oral statement, if the person proves that

(a) the misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the commission or any other securities regulatory authority or an exchange and was not corrected in another document filed by or on behalf of that other person with the commission or that other securities regulatory authority or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
(c) when the document was released or the public oral statement was made, the person did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

140.3(17) – A person, other than the responsible issuer, is not liable in an action under section 140.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person and if, after the person became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

(a) the person promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
(b) no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within 2 business days after the notification under paragraph (a), the person, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the commission of the misrepresentation or failure to make timely disclosure.

Safe Harbour for Forward-Looking Information

Securities Act

131(8.1) – A person is not liable for a misrepresentation in forward-looking information in a prospectus if the person proves that

(a) the document containing the forward-looking information contained, proximate to that information,
    (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
(b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

131(8.2) – Subsection (8.1) does not relieve a person of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.

132.1(7.1) – A person is not liable for a misrepresentation in forward-looking information in a prescribed disclosure document if the person proves that

(a) the document containing the forward-looking information contained, proximate to that information,
    (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
(b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

140.3(9) – A person is not liable in an action under section 140.3 [misrepresentation after distribution] for a misrepresentation in forward-looking information if the person proves that

(a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
    (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
(b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

140.3(10) – The person is deemed to have satisfied the requirements of subsection (9)(a) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

(a) made a cautionary statement that the oral statement contains forward-looking information,
(b) stated that
    (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
    (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information, and
(c) stated that additional information about
    (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
    (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily available document or in a portion of such a document and has identified that document or that portion of the document.

140.3(11) – For the purposes of subsection (10) (c), a document filed or otherwise generally disclosed is deemed to be readily available.

140.3(12) – Subsection (9) does not relieve a person of liability respecting forward-looking information in a financial statement required to be filed or forward-looking information in a document released in connection with an initial public offering.

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act

170(2) – No person has any remedies and no proceedings lie or may be brought against any person for any act done or omission made as a result of compliance with this Act, the regulations or any decision rendered under this Act.

Limitation Periods

Securities Act

140 – Unless otherwise provided in this Act or in the regulations, an action to enforce a civil remedy created by this Part or by the regulations must not be commenced

(a) in the case of an action for rescission, more than 180 days after the date of the transaction that gave rise to the cause of action, or
(b) in the case of an action other than for rescission, more than the earlier of
    (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
    (ii) 3 years after the date of the transaction that gave rise to the cause of action.

159(1) – Enforcement proceedings by the regulator under this Act, other than an action referred to in section 140 or 140.94, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

159(2) – If an application, motion or notice is filed with a court in respect of an investigation under section 142, 143.1 or 147 or a substantially similar matter, the running of the limitation period under subsection (1) is suspended on the date of the filing and resumes when

(a) the court decides the matter that is the subject of the application, motion or notice and,
    (i) if an appeal of the decision has been filed, any appeals of the matter have been disposed of, or
    (ii) if an appeal of the decision is not filed, the time to file an appeal of the decision expires, or

(b) the matter that is the subject of the application, motion, notice or appeal is abandoned or discontinued and the commission has been notified of that fact.

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-107

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190801_51-358_reporting-of-climate-change-related-risks.pdf

Credit Unions

What agency, department or authority supervises credit unions?

BC Financial Services Authority
https://www.bcfsa.ca/public-resources/credit-unions

What statutes govern the creation or licensing of credit unions in the jurisdiction?

Credit Union Incorporation Act, RSBC 1996, c. 82
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96082_01
Financial Institutions Act, RSBC 1996, c. 141
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96141_03#section94.2

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

Credit Union Incorporation Act

84.15(1) – Subject to this Act and the constitution and rules of the credit union, the directors must manage or supervise the management of the affairs and business of the credit union.
84.15(2) – No limitation or restriction on the powers or functions of the directors is effective against a person who does not have knowledge of the limitation or restriction.

Duty of Care and Good Faith

Financial Institutions Act

101(1) – A director or officer of a financial institution, in exercising the powers and performing the functions of a director or officer, must

(a) act honestly, in good faith and in the best interests of the financial institution, and
(b) exercise the care, diligence and skill of a reasonably prudent person under comparable circumstances,

and in doing so must take into account the interests of shareholders, depositors, if any, and policy holders, if any, and, without limiting this, of those to whom the directors owe a fiduciary duty.
101(2) – The provisions of this section are in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors of a corporation.

101(3) – Every director and officer of a financial institution must act in accordance with this Act and the regulations under it.

Duty to Adopt Code of Market Conduct

Financial Institutions Act

94.2(1) – The board of directors of a credit union must adopt a code of market conduct.
94.2(2) – The board of directors of a credit union must file with the superintendent the credit union's code of market conduct and any amendments to that code.
94.2(3) – The superintendent may direct the board of directors of a credit union to amend the credit union's code of market conduct at any time.
94.2(4) – If the board of directors of a credit union does not adopt a code of market conduct under subsection (1), the Authority may require that board to adopt a code of market conduct as established, and as amended from time to time, by the Authority.
94.2(5) – A credit union must comply with its code of market conduct.

Duty to Comply With Law

Credit Union Incorporation Act

84.31 – A director or officer of a credit union must comply with this Act and the regulations, and with the constitution and rules of the credit union.
84.16 – The provisions of a contract, the constitution or rules, or the circumstances of a director's appointment do not relieve the director from the duty to act in accordance with this Act and the Financial Institutions Act, and the regulations under both Acts, or from any liability that by virtue of any rule of law would otherwise attach to the director in respect of any negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the credit union.

Duty to Disclose to Person Acquiring Securities

Credit Union Incorporation Act

63 – Before an equity share or other security instrument, for which a disclosure statement under section 62 (2) is required, is issued to a person acquiring the equity share or security instrument from the credit union, and before that person has become obliged to acquire the equity share or security instrument, the credit union must deliver to that person a true copy of the disclosure statement and any relevant statement of material change.

Duty to Comply with Capital and Liquidity Requirements

Financial Institutions Act

67(1) – A financial institution must ensure that it has adequate liquid assets and an adequate capital base in relation to the business carried on by it, in accordance with the regulations and the rules made by the Authority.
67(2) – If the superintendent considers that the liquid assets or capital base of a financial institution are, or within one year will be, inadequate in relation to the business carried on by it whether or not the financial institution is complying with the regulations and the rules made by the Authority, the superintendent may order the financial institution to acquire additional liquid assets or increase its capital base in the amount and form and by the date specified in the order.

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Derivative Actions

Credit Union Incorporation Act

84.4(1) – In this section:
"auxiliary member" includes a beneficial owner of an equity share in the credit union, other than a membership share, that has been registered in the name of an auxiliary member;
"complainant" means, in relation to a credit union, a member, auxiliary member or director of the credit union and includes any other person who, in the discretion of the Supreme Court, is a proper person to make an application under this section;
"member" includes a beneficial owner of an equity share in the credit union that has been registered in the name of a member.
84.4(2) – A complainant may, with leave of the Supreme Court, bring an action in the name and on behalf of the credit union

(a) to enforce a right, duty or obligation owed to the credit union that could be enforced by the credit union itself, or
(b) to obtain damages for any breach of a right, duty or obligation referred to in paragraph (a),

whether the right, duty or obligation arises under this Act or otherwise.
84.4(3) – A complainant, with leave of the Supreme Court, in the name and on behalf of the credit union, may defend an action brought against the credit union.
84.4(4) – A complainant, on notice to the credit union, may apply to the Supreme Court for the leave referred to in subsection (2) or (3) and, if

(a) the complainant has made reasonable efforts to cause the directors of the credit union to commence or diligently prosecute or defend the action,
(b) the complainant is acting in good faith,
(c) it appears to the court to be in the interests of the credit union that the action be brought or defended, and
(d) in the case of an application by a member or auxiliary member, the person was a member or auxiliary member, as the case may be, of the credit union at the time of the transaction or other event giving rise to the cause of action,

the court may require that notice of the application be served on those persons, and may grant the leave on terms the court considers appropriate.
84.4(5) – While an action brought or defended under this section is pending, the Supreme Court may,

(a) on the application of a complainant, authorize any person to control the conduct of the action or give any other directions for the conduct of the action, and
(b) on the application of the person controlling the conduct of the action, order, on terms and conditions the court considers appropriate, that the credit union pay the person interim costs, including legal fees and disbursements, for which the person may be made accountable to the credit union by the court on the final disposition of the action.

84.4(7) – An action brought or defended under this section must not be discontinued, settled or dismissed without the approval of the Supreme Court.
84.4(8) – An application made or an action brought or defended under this section must not be stayed or dismissed merely because it is shown that an alleged breach of a right, duty or obligation, owed to the credit union, has been or might be approved by the members and auxiliary members of that credit union, but evidence of that approval or possible approval may be taken into account by the Supreme Court in making an order under this section.
84.42(1) – An application to the Supreme Court under this Act must be made by motion and, unless notice is specifically required by this Act, may be brought without notice to any other person.

84.42(2) – Despite subsection (1), the Supreme Court may direct that notice of the application be served on those persons the court requires.

Financial Services Act

151(1) – If an action is brought under section 232 of the Business Corporations Act or section 84.4 of the Credit Union Incorporation Act in relation to a transaction that is prohibited under this Part, the powers of the Supreme Court include the power to make an order that a person who authorizes, acquiesces in, participates in or facilitates the transaction pay to the financial institution or a subsidiary of a financial institution any

(a) damages suffered by the financial institution or the subsidiary,
(b) amount paid by the financial institution or the subsidiary in the transaction,
(c) amount lent by the financial institution or the subsidiary, or
(d) amount expended by the financial institution in the transaction.

151(2) – If a transaction that is prohibited under this Part is made or entered into, the right to bring an action conferred on a complainant by section 232 (2) (a) and (b) of the Business Corporations Act or section 84.4 (2) (a) and (b) of the Credit Union Incorporation Act is deemed also to be conferred on the superintendent.

Offences

Credit Union Incorporation Act

101(2) – A person commits an offence who

(a) […]
(b) contravenes section 63 [disclosure to person acquiring securities]
(c) knowingly provides false information in relation to a matter under this Act, or
(d) [Repealed 2011-29-54.]
(e) contravenes a condition of a consent given under this Act.

101(3) – If a credit union commits an offence under this Act, an employee, officer, director or agent of the credit union who authorizes, permits or acquiesces in the offence commits the same offence, whether or not the credit union is convicted of the offence.

Penalties for Offences

Credit Union Incorporation Act

102(1) – A person who commits an offence under section 101(2)(c) [misleading information] is liable

(a) in the case of a corporation, on a first conviction to a fine of not more than $500 000 and on each subsequent conviction to a fine of not more than $1 000 000, and
(b) in the case of an individual,
    (i) on a first conviction, to a fine of not more than $500 000 or to imprisonment for not more than 2 years or to both, and
    (ii) on each subsequent conviction, to a fine of not more than $1 000 000 or to imprisonment for not more than 2 years or to both.

102(2) – A person who commits an offence under section 101 (2) (b) is liable

(a) in the case of a corporation, to a fine of not more than $50 000, and
(b) in the case of an individual, to a fine of not more than $25 000.

Order to Comply

Credit Union Incorporation Act

105 – If a person is convicted of an offence under this Act, the court in which proceedings in respect of the offence are taken, in addition to any punishment the court may impose, may order that person to comply with the provisions of this Act or the regulations.

Financial Institutions Act

244(1) – In this section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.

244(2) – If, in the opinion of the superintendent, a person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act, the regulations or the rules made by the Authority,

(a.01) does not comply with the Credit Union Incorporation Act,

(b) does not comply with a condition of

(i) a business authorization, consent or order under this Act,

(ii) a licence issued under Division 2 of Part 6, or

(iii) a permit issued under section 187,

(c) might reasonably be expected to result in a state of affairs not in compliance with

(i) this Act, the regulations or the rules made by the Authority,

(ii) the Credit Union Incorporation Act,

(d) does not comply with a written undertaking given under this Act, or

(e) might reasonably be expected to harm

(i) in the case of a trust company or credit union, the interests of depositors or persons for whom the trust company or credit union acts in a fiduciary capacity, or

(ii) in the case of an insurance company, the interests of insureds,

then the superintendent may

(f) order the person to

(i) cease doing the act,

(ii) cease pursuing the course of conduct, or

(iii) do anything that the superintendent considers to be necessary to remedy the situation, or

(g) if the person is a financial institution and the superintendent considers it appropriate to do so, give the financial institution an opportunity to make a written voluntary compliance agreement with the superintendent, by which the financial institution undertakes to rectify the act or course of conduct.

244(3) – Despite a voluntary compliance agreement, the superintendent may make an order under subsection (2) (f) in respect of the financial institution or another person that is the subject of an order under subsection (2)

(a) on matters not covered by the agreement,

(b) if the agreement is not complied with, on matters covered in the agreement,

(c) if in the opinion of the superintendent there has been a deterioration in the financial condition of the financial institution, or

(d) on matters provided for in the agreement if all the facts related to the matter provided for in the agreement were not known by the superintendent at the time of the agreement.

244(4) – On the application of a financial institution that has made a voluntary compliance agreement with the superintendent, the superintendent may approve the alteration of the agreement.

244(5) – If a person has been

(a) convicted of an offence in Canada or another jurisdiction arising from a transaction, business or course of conduct related to financial services, or

(b) found by a regulator or a court in Canada or another jurisdiction to have contravened the laws of that jurisdiction respecting financial services,

the superintendent may order the person to

(c) cease doing any act or pursuing any course of conduct that is the same or similar to the act or course of conduct that resulted in the conviction or finding described in paragraph (a) or (b), or

(d) carry out specified actions that the superintendent considers necessary to remedy the situation.

What section sets out the defenses available to the directors and officers for these alleged breaches?

Defence – Derivative Action

Credit Union Incorporation Act

84.41 – In any proceeding against a person who is a director, officer, receiver, receiver manager or liquidator of a credit union, if it appears to the Supreme Court that the person is or may be liable in respect of negligence, default, breach of duty or breach of trust, but has acted honestly and reasonably and ought fairly to be excused, the court must take into consideration all the circumstances of the case, including those connected with the person's appointment, and may relieve the person, either wholly or partly, from liability, on the terms the court considers necessary.

Limitation Period

Credit Union Incorporation Act

104 – A proceeding for an offence under this Act must not be commenced in any court more than 2 years after the facts on which the proceedings are based first come to the knowledge of the superintendent or the Authority, whichever comes first.

Insurance Companies

What agency, department or authority supervises insurance companies?

BC Financial Services Authority
https://www.bcfsa.ca/about-us/what-we-do

What statutes govern the creation or licensing of insurance companies in the jurisdiction?

Insurance Act, RSBC 2012, c.1
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/12001_00
Financial Institutions Act, RSBC 1996, c. 141
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96141_03#section94.2

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty of Care and Good Faith

Financial Institutions Act

101(1) – A director or officer of a financial institution, in exercising the powers and performing the functions of a director or officer, must

(a) act honestly, in good faith and in the best interests of the financial institution, and

(b) exercise the care, diligence and skill of a reasonably prudent person under comparable circumstances,

and in doing so must take into account the interests of shareholders, depositors, if any, and policy holders, if any, and, without limiting this, of those to whom the directors owe a fiduciary duty.

101(2) – The provisions of this section are in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors of a corporation.

101(3) – Every director and officer of a financial institution must act in accordance with this Act and the regulations under it.

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Investigation

215(1) – If the superintendent considers it necessary or desirable to establish whether there is or has been compliance by any person with the provisions of this Act, the regulations or the rules made by the Authority, the superintendent by order may appoint a person to make an investigation the superintendent considers expedient for the due administration and enforcement of this Act and in the order must direct the scope of the investigation.

215(2) – For the purpose of an investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine

(a) the affairs of the person in respect of whom the investigation is being made and records, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of, in relation to or connected with the person and property, assets or things owned, acquired or alienated in whole or in part by the person, or by any person acting on behalf of or as agent for the person, and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in, or in relation to or in connection with the person and the relationship that may at any time exist or have existed between the person and any other person because of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of security instruments or other property, the transfer, negotiation or holding of security instruments, interlocking directorates, common control, undue influence or control or any other relationship.

215(3) – If an investigation is ordered under this section, the superintendent may also appoint an accountant or other expert to examine records and things of the person whose affairs are being investigated.

215(4) – Every person appointed under subsection (1) or (3) must provide the superintendent with a full and complete report of the investigation including any transcript of evidence and material in that person's possession relating to the investigation.

Offence – Misleading Statement

Financial Institutions Act

252(2)(f) – A person commits an offence who makes a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement is made, is false or misleading with respect to a material fact or that omits to state a material fact, the omission of which makes the statement false or misleading.

Order To Cease

Financial Institutions Act

244(1) – In this section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.
244(2) – If, in the opinion of the superintendent, a person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act, the regulations or the rules made by the Authority,
(a.04) does not comply with the Insurance Act as that Act applies to insurers,
(c) does not comply with a condition of
    (i) a business authorization, consent or order under this Act,
    (ii) a licence issued under Division 2 of Part 6, or
    (iii) a permit issued under section 187,
(h) might reasonably be expected to result in a state of affairs not in compliance with
    (i) this Act, the regulations or the rules made by the Authority,
    […]
    (v) the Insurance Act as that Act applies to insurers,
(e) does not comply with a written undertaking given under this Act, or
(f) might reasonably be expected to harm
    (i) in the case of a trust company or credit union, the interests of depositors or persons for whom the trust company or credit union acts in a fiduciary capacity, or
    (ii) in the case of an insurance company, the interests of insureds,

then the superintendent may

(g) order the person to
    (i) cease doing the act,
    (ii) cease pursuing the course of conduct, or
    (iii) do anything that the superintendent considers to be necessary to remedy the situation, or
(h) if the person is a financial institution and the superintendent considers it appropriate to do so, give the financial institution an opportunity to make a written voluntary compliance agreement with the superintendent, by which the financial institution undertakes to rectify the act or course of conduct.

244(3) – Despite a voluntary compliance agreement, the superintendent may make an order under subsection (2) (f) in respect of the financial institution or another person that is the subject of an order under subsection (2)

(e) on matters not covered by the agreement,
(f) if the agreement is not complied with, on matters covered in the agreement,
(g) if in the opinion of the superintendent there has been a deterioration in the financial condition of the financial institution, or
(h) on matters provided for in the agreement if all the facts related to the matter provided for in the agreement were not known by the superintendent at the time of the agreement.

244(4) – On the application of a financial institution that has made a voluntary compliance agreement with the superintendent, the superintendent may approve the alteration of the agreement.
244(5) – If a person has been

(e) convicted of an offence in Canada or another jurisdiction arising from a transaction, business or course of conduct related to financial services, or
(f) found by a regulator or a court in Canada or another jurisdiction to have contravened the laws of that jurisdiction respecting financial services,

the superintendent may order the person to

(g) cease doing any act or pursuing any course of conduct that is the same or similar to the act or course of conduct that resulted in the conviction or finding described in paragraph (a) or (b), or

(h) carry out specified actions that the superintendent considers necessary to remedy the situation.

Suspension of Licence

Financial Institutions Act

231(1) – If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

(a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,

(b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,

(c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,

(d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,

(e) has contravened section 79, 94, 177 or 178 (1), or

(e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

(f) reprimand the licensee or former licensee;

(g) suspend or cancel the licence of the licensee;

(h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;

(i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;

(j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;

(k) in respect of conduct described in paragraph (a), (b), (c), (d), (e) or (e.1), fine the licensee or former licensee an amount

(i) not more than $50 000 in the case of a corporation or a partnership, or

(ii) not more than $25 000 in the case of an individual.

231(2) – A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.

Administrative Penalties

Financial Institutions Act

253.1(1) – If, in the opinion of the superintendent, a person has contravened

(a) a prescribed provision of the Act,

(b) a prescribed provision of the regulations or the rules made by the Authority,

(c) a condition of a business authorization,

(d) an order under section 244 (2) (f), 245 (1) (f) to (j) or 247, or

(e) an undertaking given to the superintendent under section 208 or 244 (2) (g),

the superintendent may give written notice to the person requiring the person to pay an administrative penalty in the amount specified in the notice.

253.1(2) – A notice of administrative penalty under subsection (1) must specify all of the following:

(a) the contravention;
(b) the amount of the administrative penalty;
(c) the date by which the person must pay the administrative penalty;
(d) the right of the person, within 14 days after the notice is delivered, to dispute the administrative penalty, including disputing the amount of the administrative penalty, and the procedure for disputing the penalty.

253.1(3) – A person to whom an administrative penalty notice is given must, within 14 days after receiving the notice,

(a) pay the administrative penalty, or
(b) by delivering notice in writing to the superintendent, dispute the administrative penalty, including disputing the amount of the administrative penalty, in accordance with the regulations.

Restitution

Financial Institutions Act

257 – If a person is convicted of an offence under this Act, then, in addition to any other penalty, the court may order the person convicted to pay compensation or make restitution.

Order to Comply

Financial Institutions Act

256 – If a person is convicted of an offence under

(a) this Act, or
(b) the Business Corporations Act as that Act applies to trust companies, insurance companies or extraprovincial corporations,

the court may, in addition to any punishment the court may impose, order the person to comply with the applicable enactment.

Revocation of Business Authorization

Financial Institutions Act

249(1) – If the Authority has reasonable grounds to believe that

(a) a financial institution has failed to comply with an order of the Authority, superintendent, Commercial Appeals Commission or tribunal,
(b) a financial institution has failed to comply with an order of the Supreme Court made under section 246,
(c) a financial institution's licence, registration, permit or business authorization has been cancelled or suspended, or limitations, restrictions or conditions have been imposed on the financial institution's authority to carry on business under a law of Canada or a province,
(d) a financial institution has failed to comply with a condition of its business authorization,
(e) a financial institution is carrying on or soliciting business in another jurisdiction without first being authorized to do so under the laws of that jurisdiction,
(f) a financial institution has ceased to do business in British Columbia, or
(g) a credit union has fewer than 25 members,

the Authority by order may

(h) [Repealed 2021-2-35.]
(i) require the financial institution to cease carrying on business for a period of not more than 21 days specified in the order, or

(j) revoke the financial institution's permit or business authorization.

249(1.1) – The Authority may make an order under subsection (1) (i) or (j) or the superintendent may make an order under subsection (1.01) if a financial institution has been

(a) convicted of an offence in Canada or another jurisdiction arising from a transaction, business or course of conduct related to financial services, or

(b) found by a regulator or a court in Canada or another jurisdiction to have contravened the laws of that jurisdiction respecting financial services.

What section sets out the defenses available to the directors and officers for these alleged breaches?

Indemnification

102(1) – Except for an action by or on behalf of the financial institution to procure a judgment in favour of the financial institution, a financial institution may indemnify

(a) a director or officer of the financial institution,

(b) a former director or officer of the financial institution, or

(c) an individual who, at the request of the financial institution, is or was a director or officer of a corporation of which the financial institution is or was a member or creditor,

against any costs, charges and expenses, including an amount paid to settle an action or proceeding or to satisfy a judgment, reasonably incurred for any civil, criminal or administrative action or proceeding, whether threatened, pending, continuing or completed, to which the director or officer is or may be made a party because of being or having been a director or officer of the financial institution or corporation, if

(d) the director or officer acted honestly and in good faith with a view to the best interests of the financial institution or corporation, as the case may be, and

(e) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director or officer had reasonable grounds for believing that the conduct was lawful.

102(2) – With the approval of a court, a financial institution may indemnify a person referred to in subsection (1) (a) or (b) for an action, whether threatened, pending, continuing or completed, by or on behalf of the financial institution to procure a judgment in favour of the financial institution, to which the person is or may be made a party because of being or having been a director or officer of the financial institution, against any costs, charges and expenses reasonably incurred in connection with the action if the conditions set out in subsection (1) (d) and (e) are fulfilled.

102(3) – A financial institution must indemnify a person referred to in subsection (1) (a) or (b) who has been substantially successful on the merits in the outcome of a civil, criminal or administrative action or proceeding, to which the person is made a party because of being or having been a director or officer of the financial institution, against all costs, charges and expenses reasonably incurred for the action or proceeding if the conditions set out in subsection (1) (d) and (e) are fulfilled.

102(4) – A financial institution or a person referred to in subsection (1) (a), (b) or (c) may apply to a court for an order approving an indemnity under this section and the court may make any order it thinks fit.

102(5) – An applicant under subsection (4) must give the superintendent not less than 14 days' notice of the application and the superintendent is entitled to appear and be heard in person or by counsel.

102(6) – On an application under subsection (4), the court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel.
102(7) – A financial institution may purchase and maintain insurance for the benefit of a person referred to in subsection (1) (a), (b) or (c) against any liability incurred as a director or officer.

Limitation Period

255 – No proceeding for an offence under this Act may be commenced in any court more than 3 years after the facts on which the proceedings are based first come to the knowledge of the superintendent or Authority, whichever comes first.
253.1(15) – The time limit for serving an administrative penalty notice under subsection (1) is 2 years after the date that the superintendent or the Authority first had knowledge of the facts on which the notice of contravention is based, whichever is earlier.

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

BC Financial Services Authority
https://www.bcfsa.ca/about-us/what-we-do

What statute governs the creation of employment-based pension plans in the jurisdiction?

Pension Benefits Standards Act, SBC 2012, c. 30
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_12030

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Provisions imposing such duties are found in the *Pension Benefits Standards Act,* as well as the following regulation established under the *Pension Benefits Standards Act*:

- B.C. Reg. 71/2015, *Pension Benefits Standards Act*
  https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/71_2015#section51

Duty to Manage

35(1) – The administrator of a pension plan must ensure that the plan and the pension fund are administered in accordance with this Act, the regulations and the plan documents.

Duty of Care

35(2) – While acting in the capacity of administrator of a pension plan, the administrator stands in a fiduciary capacity in relation to
(a) the members, and
(b) others entitled to benefits.
35(3) – Without limiting subsection (2), the administrator, while acting in the capacity of administrator of a pension plan, must
(a) act honestly, in good faith and in the best interests of
(i) the members, and
(ii) others entitled to benefits, and
(b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.

Duty to Comply with Law

35(1) – The administrator of a pension plan must ensure that the plan and the pension fund are administered in accordance with this Act, the regulations and the plan documents.

Duty to Supervise

35(7) – If an administrator employs an agent to exercise one or more of the powers or perform one or more of the duties of the administrator, the administrator must

(a) be satisfied that the agent is qualified to exercise the powers or perform the duties for which the agent is employed, and

(b) carry out reasonable and prudent supervision of the agent.

Duty to Review Plan

41(1) – The administrator of a pension plan must, at the times and in the manner required by the regulations, assess the administration of the plan including, without limitation,

(a) the plan's compliance with this Act and the regulations,

(b) the plan's governance,

(c) the funding of the plan,

(d) the investment of the pension fund,

(e) the performance of the trustees, if any, and

(f) the performance of the administrative staff and any agents of the administrator.

41(2) – An administrator must prepare the assessment required under subsection (1) in writing and must retain that written assessment and make it available to the superintendent on the superintendent's request.

Duty to Establish Statement of Investment Policies and Procedures

Pension Benefits Standards Act

42(1) – The administrator of a pension plan must ensure that a written governance policy that meets the prescribed criteria is established in respect of the structures and processes for overseeing, managing and administering the plan.

42(2) – The administrator of a pension plan must ensure that the plan is administered in accordance with the governance policy established under subsection (1).

43(1) – The administrator of a pension plan must ensure that a written statement of investment policies and procedures that meets the prescribed criteria is established in respect of the plan's portfolio of investments.

43(2) – The administrator of a pension plan must ensure that the pension fund is invested in accordance with the statement of investment policies and procedures established under subsection (1).

43(3) – If the plan text document of a pension plan contains a benefit formula provision, the administrator of the plan must provide, to the actuary engaged to prepare the actuarial valuation report for the plan under section 38, a copy of the statement of investment policies and procedures on or before the later of

(a) the date that is 60 days after the establishment or amendment of the statement, and

(b) the effective date of the actuary's engagement.

44 – If the plan text document of a pension plan contains a benefit formula provision, the administrator of the plan must

(a) ensure that a written funding policy is established that meets the prescribed criteria respecting funding objectives and the intended method for achieving those objectives, and

(b) provide, to the actuary engaged to prepare the actuarial valuation report for the plan, a copy of the funding policy on or before the later of

(i) the date that is 60 days after the establishment or amendment of the funding policy, and

(ii) the effective date of the actuary's engagement.

Pension Benefits Standards Regulation

51(1) – The administrator of a pension plan must ensure that the written statement of investment policies and procedures required under section 43 of the Act is established.

51(2) – In establishing the statement of investment policies and procedures, the administrator must have regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations, including, without limitation, the following:

(a) categories of investments, including derivatives;

(b) diversification of the investment portfolio;

(c) asset mix and the basis on which that mix is determined, including by reference to volatility and rate of return expectations;

(d) liquidity of investments;

(e) the lending of cash or securities;

(f) the retention or delegation of voting rights acquired through investments;

(g) the method of, and the basis for, the valuation of investments that are not regularly traded at a marketplace, as defined in section 2 (1) of the Pension Benefits Standards Regulation, 1985 (Canada), SOR/87-19;

(h) related party transactions permitted under section 17 of federal Schedule III and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan.

51(3) – The statement referred to in subsection (1) must include

(a) a description of the factors to which the administrator had regard when establishing the statement, and

(b) how those factors were applied to establish the policies and procedures set out in the statement.

51(4) – If investments of the plan are directed entirely by the members, a statement of investment policies and procedures is not required.

Duty to Invest Reasonably

60(1) – Investments, including loans, and financial decisions respecting a pension plan must be made

(a) in accordance with this Act and the regulations, and

(b) in the best financial interests of plan members and other persons entitled to benefits under the plan.

60(2) – Pension plan assets must be invested in a manner that a reasonable and prudent person would adopt if investing the assets on behalf of a person to whom the investing person owed a fiduciary duty to make investments

(a) without undue risk of loss, and

(b) with a reasonable expectation of a return on the investments commensurate with the risk,

having regard to the plan's liabilities.

Duty to File Amendments

18 – If an amendment is made to the plan text document of a pension plan, the administrator must, within the prescribed period and in the form and manner required by the superintendent, file

(a) a certified copy of the amendment,
(b) a statement in the prescribed form that, in the opinion of the administrator, the amendment complies with this Act and the regulations, and
(c) any other records required by the superintendent.

Duty to Provide Prescribed Information

37(1) – Subject to and in accordance with the regulations, the administrator of a pension plan must, without charge, provide prescribed information, including records,

(a) to members,
(b) if a member who is entitled to a benefit is deceased, to whichever of the following is entitled to receive the benefit:
(iii) the surviving spouse of the deceased;
(iv) the person who is, in relation to the benefit, the designated beneficiary,

or, if no person referred to in subparagraph (i) or (ii) is entitled to the benefit, the personal representative of the estate of the deceased,

(i) to employees who are, or are about to be, eligible to become active members of the plan, and
(j) to prescribed persons.

37(2) – Subject to and in accordance with the regulations, if any of the persons referred to in paragraph (a), (b), (c) or (d) of subsection (1) requests access to prescribed information, the administrator of the pension plan in relation to which the request was made must, at the option of the administrator, either

(a) allow the person to examine the prescribed information without charge at a prescribed place, or
(b) provide to the person, without charge, a copy of the prescribed information that the person has requested.

Duty to Ensure Contributions Paid

40 – If a person becomes entitled or obligated to receive a lump-sum payment or a transfer of benefits from a pension plan, the administrator must, in accordance with the regulations, make the payment or transfer within the prescribed period.

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Order for Compliance

113(1) – If, in the opinion of the superintendent,

(a) the plan documents of a pension plan do not comply with this Act or the regulations,
(b) the administrator has acted, is acting or will act in breach of the Act or the regulations, or
(c) the plan is not otherwise being administered in accordance with this Act, the regulations or the plan documents,

the superintendent may

(d) direct the administrator, a participating employer or any person, in writing,

(i) to cease or refrain from committing the act or pursuing the course of conduct that constitutes the non-compliance, and
(ii) to perform such acts, including, without limitation, payment or repayment of money, as in the opinion of the superintendent are necessary to remedy the situation, or

(e) institute any action that could be initiated by
(i) a member of the plan, or
(ii) any other person entitled to a benefit under the plan.

113(2) – If, in the opinion of the superintendent, an administrator, a participating employer or any other person with responsibilities under this Act is doing or is about to do anything, in respect of a pension plan, that is contrary to safe and sound pension practices, the superintendent may direct that person, in writing,

(a) to cease or refrain from doing that thing, or
(b) to do whatever the superintendent considers necessary to remedy the situation.

113(3) – If, in the opinion of the superintendent, a person has failed to comply with a direction made under this section, the superintendent may apply to the court for either or both of the following:

(a) an order directing the person to comply with the direction or restraining the person from violating the direction;
(b) an order directing the directors and officers of the person to cause the person to comply with or to cease violating the direction.

113(4) – On an application under subsection (3), the court may make any order it considers appropriate.

Administrative Penalties

116(1) – If, in the opinion of the superintendent, a person has

(a) contravened a prescribed provision of this Act,
(b) contravened a prescribed provision of the regulations,
(c) contravened this Act by failing to file, within the period required by the regulations for that filing, a record that is required to be filed under this Act,
(d) contravened this Act by failing to provide to an authorized person, within the period stipulated in a notice served under section 110 (3) (b), information or a record requested by the authorized person,
(e) contravened this Act by failing to disclose information to persons within the period required by the regulations for that disclosure, or
(f) contravened this Act by failing to make contributions to the pension fund within the period required by the regulations for the making of those contributions,

the superintendent may, by order, impose on the person an administrative penalty and, in that event, must give notice of that decision by serving a notice of administrative penalty on that person.

116(2) – If, in the opinion of the superintendent, a corporation has committed a contravention referred to in subsection (1), the superintendent may, by order in accordance with this section, impose an administrative penalty on an officer, director or agent of the corporation who, in the opinion of the superintendent, directed, authorized, assented to, acquiesced in or participated in the contravention, whether or not the corporation is liable for or pays an administrative penalty and, in that event, must give notice of that decision by serving a notice of administrative penalty on that person.

116(3) – A notice of administrative penalty under subsection (1) or (2) must specify all of the following:

(a) the contravention;
(b) the amount of the administrative penalty;
(c) the date by which the person must pay the administrative penalty, which date must be not less than 30 days after the date on which the notice is served;
(d) the right of the person, within 30 days after the notice is served, to dispute one or both of the imposition and the amount of the administrative penalty;
(e) any prescribed information.

116(4) – An administrative penalty for a contravention must not exceed the amount prescribed for that contravention, and in any event must not exceed

(a) $250 000, in the case of a corporation or administrator, and
(b) $50 000, in the case of an individual other than an administrator.

116(8) – The pension fund must not be used to pay any portion of an administrative penalty imposed under this section.

Enforcement of Administrative Penalty

117(1) – If an administrative penalty is imposed under section 116, the following apply:

(a) if no notice of objection is served under section 126 (1) within the period referred to in section 126 (1), the penalty constitutes a debt payable by the person on whom the penalty is imposed;
(b) if a notice of objection is served under section 126 (1) and a notice of reconsideration is served under section 126 (2) that indicates that the decision to impose the penalty is confirmed, that penalty constitutes a debt payable by the person on whom that penalty is imposed;
(c) if a notice of objection is served under section 126 (1) and a notice of reconsideration is served under section 126 (2) that indicates that the decision to impose the penalty is varied to change the amount of the penalty, the penalty set out in the notice of reconsideration constitutes a debt payable by the person on whom that penalty is imposed;
(d) if a notice of objection is served under section 126 (1) and a notice of reconsideration is served under section 126 (2) that indicates that the decision to impose the penalty is rescinded, that penalty ceases to apply to the person.

117(2) – If a person fails to pay an administrative penalty as required under section 116 (7), the superintendent may file with the Supreme Court or Provincial Court a certified copy of the notice of administrative penalty and, on being filed with a court under this subsection, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

Offences

122 – Subject to section 120, a proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

123(1) – A person commits an offence who

(a) contravenes this Act or the regulations, or
(b) does any of the following contrary to or to avoid compliance with this Act or the regulations:
    (i) destroys, alters, mutilates, secretes or otherwise disposes of records;
    (ii) makes a false or misleading statement or entry in any record;
    (iii) fails to state anything in any records;

(iv) omits from any written or oral statement any material fact if the omission of that fact renders the statement misleading in the light of the circumstances in which it is made.

123(2) – The maximum penalty that may be imposed on a person who commits an offence under this Act must not exceed

(a) $500 000, in the case of a corporation or administrator, and

(b) $100 000, in the case of an individual other than an administrator.

123(3) – If a corporation commits an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence commits an offence, and is liable to a fine of not more than $100 000, whether or not the corporation has been prosecuted for the contravention.

123(4) – The pension fund must not be used to pay any portion of a fine imposed under this section.

123(5) – Without limiting section 113 (3), if a person is convicted of an offence under this Act, the court, in addition to any punishment it may impose, may order the person to comply with the provisions of this Act and the regulations.

What section sets out the defenses available to those individuals who allegedly breached those duties?

Limitation Periods

116(5) – The superintendent must not serve a notice of administrative penalty under subsection (1) or (2) more than 3 years after the date on which the superintendent first had knowledge of the facts on which the notice is based.

116(6) – A statement by the superintendent as to the date on which the superintendent first had knowledge of the facts on which the notice is based is admissible in evidence as proof of the facts in the statement without proof of the appointment or signature of the superintendent.

124(1) – A prosecution under this Act must not commence later than 3 years after the time when the superintendent first had knowledge of the facts on which the prosecution is based.

124(2) – A statement by the superintendent as to the time when the superintendent first had knowledge of the facts on which the prosecution is based is admissible in evidence in respect of the prosecution as proof of the facts in the statement without proof of the appointment or signature of the superintendent.

Québec

Droit des sociétés

Au sein du gouvernement, quel est le ministère responsable du droit des sociétés?

Ministère des Finances
https://www.finances.gouv.qc.ca/

Quelle est la loi qui régit la constitution des sociétés commerciales dans la juridiction?

Loi sur les sociétés par actions, RLRQ c S-31.1
https://www.legisquebec.gouv.qc.ca/fr/document/lc/S-31.1?&cible

Quels sont les articles imposant des obligations aux administrateurs et aux dirigeants d'une société?

Les dispositions imposant des obligations aux administrateurs et aux dirigeants peuvent être consultées dans la *Loi sur les sociétés par actions,* ainsi que dans le *Code civil du Québec* :

- *Loi sur les sociétés par actions,* RLRQ c S-31.1
  https://www.legisquebec.gouv.qc.ca/fr/document/lc/S-31.1?&cible

- *Code civil du Québec,* SQ 1991, c 64.
  https://www.legisquebec.gouv.qc.ca/fr/document/lc/CCQ-1991

Obligation de gestion

Code civil

311 – Legal persons act through their organs, such as the board of directors and the general meeting of the members.

Loi sur les sociétés par actions

112 – Subject to a unanimous shareholder agreement, the board of directors exercises all the powers necessary to manage, or supervise the management of, the business and affairs of the corporation.

Except to the extent provided by law, such powers may be exercised without shareholder approval and may be delegated to a director, an officer or one or more committees of the board.

Obligation de se conformer à la loi

Code civil

301 – Legal persons have full enjoyment of civil rights.

302 – Every legal person has a patrimony which may, to the extent provided by law, be divided or appropriated to a purpose. It also has the extra-patrimonial rights and obligations flowing from its nature.

310 – The functioning, the administration of the patrimony and the activities of a legal person are regulated by law, the constituting act and the by-laws; to the extent permitted by law, they may also be regulated by a unanimous agreement of the members.

In case of inconsistency between the constituting act and the by-laws, the constituting act prevails.

321 – A director is considered to be the mandatary of the legal person. He shall, in the performance of his duties, conform to the obligations imposed on him by law, the constituting act or the by-laws and he shall act within the limits of the powers conferred on him.

1457 – Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature.

He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.

Devoir de diligence et de bonne foi

Code civil

322 – A director shall act with prudence and diligence.

He shall also act with honesty and loyalty in the interest of the legal person.

Loi sur les sociétés par actions 119 – Subject to this division, the directors are bound by the same obligations as are imposed by the Civil Code on any director of a legal person.

Consequently, in the exercise of their functions, the directors are duty-bound toward the corporation to act with prudence and diligence, honesty and loyalty and in the interest of the corporation.

In their capacity as mandataries of the corporation, the officers are bound, among other things, by the same obligations as are imposed on the directors under the second paragraph.

120 – Subject to the provisions of section 214, no provision of the articles, the by-laws, a resolution or a contract may relieve directors from their obligations, or from liability for a breach of their obligations.

Obligation de tenir des registres exacts et de les mettre à disposition pour inspection

Loi sur les sociétés par actions 31 – A corporation must prepare and maintain, at its head office, records containing

(1) the articles and the by-laws, and any unanimous shareholder agreement;
(2) minutes of meetings and resolutions of shareholders;
(3) the names and domiciles of the directors, and the dates of the beginning and end of their term of office; and
(4) a securities register.

32 – The shareholders may examine the corporation's records mentioned in section 31 during its regular office hours, and obtain extracts from them without charge. They are also entitled, on request and without charge, to one copy of the articles and by-laws and of any unanimous shareholder agreement.

Likewise, the creditors of the corporation may examine any unanimous shareholder agreement.

33 – The securities register of a corporation must contain the following information with respect to its shares:

(1) the names, in alphabetical order, and the addresses of present and past shareholders;
(2) the number of shares held by each such shareholder;
(3) the date and details of the issue and transfer of each share; and
(4) any amount due on any share.

The register must contain, if applicable, the same information with respect to the corporation's debentures, bonds and notes, with the necessary modifications.

34 – A corporation must prepare and maintain accounting records and records containing the minutes of meetings and resolutions of the board of directors and its committees. The records must be kept at the corporation's head office or at any other place designated by the board. The corporation is required to retain all accounting records for a period of six years after the end of the fiscal year to which they relate.

Except as otherwise provided by law, only the directors and the auditor may have access to the records referred to in the first paragraph.

130 – The shareholders of a corporation may, during the usual office hours of the corporation, examine the portions of any minutes of the meetings of the board of directors or of any other document that contain disclosures by directors or officers under sections 122 and 123.

Obligation de préparer, d'approuver et de fournir les états financiers

Loi sur les sociétés par actions 225 – At every annual shareholders meeting, the board of directors of a corporation must present the corporation's financial statements for the fiscal year ended not more than six months before the meeting.

The board of directors must also present at every annual meeting any further financial information required by the articles, the by-laws or a unanimous shareholder agreement.
As soon as the financial statements are presented at the annual meeting, every shareholder is entitled to a copy upon request.
226 – The financial statements of a corporation must include at least a balance sheet and an income statement.
The financial statements must also include the other statements and the notes and other information usually included in audited financial statements, if such statements or information have been approved by the board of directors.
227 – The financial statements of a corporation may not be issued, published or circulated unless they have been approved by the board of directors. The approval of the financial statements by the board of directors is evidenced by the signature of one or more directors, regardless of the means used to sign them.
228 – A corporation must keep the financial statements of each of its subsidiaries, and of each other legal person whose accounts are consolidated in the financial statements of the corporation, at the corporation's head office or at any other place within Québec designated by the board of directors. Shareholders of the corporation may, on request, examine the financial statements during the usual office hours of the corporation and make extracts free of charge, subject to a court order under section 229. However, the corporation may deny a request if the value of the assets, the revenues and the income before taxes of the subsidiary or legal person each represent less than 10% of the corresponding amount in the financial statements of the corporation.

Quels sont les articles permettant aux parties prenantes d'une société (actionnaires, créanciers, administrateurs, etc.) de demander réparation en cas de manquement à ces obligations?

Enquête

421 – A registered holder or beneficiary of a corporation's securities may apply to the court for an order directing an investigation to be made of the corporation and any of its affiliates.
The application may be presented in the absence of the corporation and, in such a case, is heard in camera. However, if the court considers the absence to be unwarranted, it may order that the corporation be given such notice as the court directs.
422 – The court may order the investigation applied for to be made if it considers that such an investigation would help or permit facts to be established and allow the applicant, if necessary, to seek a remedy under Division II, and if it appears to the court that

(1) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person, or the corporation or any of its affiliates was formed or is to be dissolved for a fraudulent or unlawful purpose;
(2) persons concerned with the constitution, business or affairs of the corporation or any of its affiliates have acted fraudulently or dishonestly in connection therewith; or
(3) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to a registered holder or beneficiary of shares of the corporation.

423 – An application under this division concerning a corporation governed by one of the Acts listed in Schedule 1 to the Act respecting the regulation of the financial sector (chapter E-6.1), other than a private issuer within the meaning of that expression in the regulations under the

Securities Act (chapter V-1.1) that is not governed by another Act listed in that schedule, must be notified to the Autorité.

424 – No person may publish, disclose or distribute information relating to proceedings under this division brought in the absence of the corporation concerned, except with the authorization of the court or the written consent of the corporation concerned.

Unless the court decides otherwise, that prohibition ends as of the beginning of the investigation ordered by the court.

425 – In connection with an application for an investigation, the court may, at any time, make any order it thinks fit, including

(1) an order to investigate;
(2) an order appointing and determining the remuneration of an inspector, or replacing an inspector;
(3) an order determining any notice to be given to interested persons or any other person;
(4) an order authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine any thing and make copies of any document found on the premises;
(5) an order requiring any person to make available to the inspector any information concerning the business or affairs of the corporation and any related document;
(6) an order authorizing the inspector to conduct a hearing, administer oaths, and examine any person on oath;
(7) an order authorizing the inspector to prescribe rules for the conduct of hearings the inspector may be required to hold in the exercise of investigation powers;
(8) an order giving directions to an inspector or any interested person;
(9) an order requiring the inspector to make an interim or final report to the court;
(10) an order determining whether a report of the inspector should be given to the applicant, whether copies should be sent to any person the court designates, or whether the report should be published;
(11) an order requiring the inspector to suspend or discontinue an investigation; and
(12) an order requiring the corporation to pay the costs of the investigation.

493.1 – In addition to the provisions that confer responsibilities on him or her, the enterprise registrar, or any person authorized for that purpose by the Minister, may conduct an investigation in order to repress an offence against a provision of section 31 or 33 [duty to make records available].

Examen des états financiers

228 – Within 15 days after the corporation denies a shareholder's request to examine financial statements, the shareholder may apply to the court for a review of the decision. In such a case, it is up to the corporation to show that the condition set out in the second paragraph [value of the assets, the revenues and the income before taxes of the subsidiary or legal person each represent less than 10% of the corresponding amount in the financial statements of the corporation] is fulfilled.

Règles générales pour exercer une voie de recours

439 – Applications under subdivisions 2 and 3 may be made by any of the following:

(1) a registered holder or beneficiary, and a former holder or beneficiary, of a security of a corporation or any of its affiliates;
(2) a director or an officer or a former director or officer of a corporation or any of its affiliates;

(3) any other person who, in the discretion of the court, has the interest required to make an application under this division.

440 – An application made under subdivision 2 or 3 may not be dismissed on the sole ground that it is shown that an alleged breach of a right of or an obligation owed to a corporation or its subsidiary has been or may be approved by the corporation's shareholders, but evidence of approval by the shareholders may be taken into account by a court in making a decision under either of those subdivisions.

441 – An application made or an action brought or intervened in under subdivision 2 may not be discontinued or settled without the approval of the court given on such terms as the court thinks fit.

442 – Unless the court decides otherwise, an applicant, even one not residing in Québec, is not required to give security for costs in any application made under subdivision 2 or 3.

443 – In an application made under subdivision 2, 3, 5 or 7, the court may, at any time, order a corporation or any of its subsidiaries to pay to the applicant interim costs, including professional fees, to the extent that they are reasonable. The applicant may be held accountable for such interim costs at the time of the final decision.

The court grants interim costs, on the terms determined by the court, if it considers that

(1) the financial situation of the corporation or its subsidiary enables payment of such costs;
(2) the application appears reasonably founded; and
(3) the financial situation of the applicant would not allow the application to be made or maintained without payment of such interim costs.

In its assessment of the financial situation of the applicant, the court need not consider whether or not the situation results from the conduct of the corporation or its subsidiary.

444 – An application concerning a corporation governed by one of the Acts listed in Schedule 1 to the Act respecting the regulation of the financial sector (chapter E-6.1), other than a private issuer within the meaning of that expression in the regulations under the Securities Act (chapter V-1.1) that is not governed by another Act listed in that schedule, must be notified to the Autorité.

Action dérivée

445 – An applicant may apply to the court for leave to bring an action in the name and on behalf of a corporation or a corporation that is one of its subsidiaries, or intervene in an action to which the corporation or subsidiary is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation or subsidiary.

446 – No application for authorization may be made unless the applicant has given the directors of a corporation or its subsidiary 14 days' prior notice of the applicant's intention to apply to the court.

Authorization may be granted if the court is satisfied that the board of directors of the corporation or its subsidiary has not brought, diligently prosecuted or defended or discontinued the action, and if the court considers that the applicant is acting in good faith and that it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

When all the directors of the corporation or its subsidiary have been named as defendants, prior notice to the directors of the applicant's intention to apply to the court is not required.

447 – In connection with an action brought or intervened in under this subdivision, the court may make any order it thinks fit, including

(1) an order authorizing the applicant or any other person to control the conduct of the action;

(2) an order giving directions for the conduct of the action;
(3) an order revising the functioning of the corporation or its subsidiary by amending the articles or the by-laws or by establishing or amending a unanimous shareholder agreement;
(4) an order making appointments to the board of directors of the corporation or its subsidiary, either to replace all or some of the directors or to increase the number of directors;
(5) an order directing an investigation to be made under Division I;
(6) an order directing that any amount awarded against a defendant be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and
(7) an order requiring the corporation or its subsidiary to pay, in whole or in part, the professional fees and other reasonable costs incurred by the applicant in connection with the action or intervention.

448 – If, under section 447, the court orders an amendment of the articles or the by-laws of a corporation or a unanimous shareholder agreement, no other amendment to the articles or by-laws or to the unanimous shareholder agreement may be made without court authorization, for the period or under the conditions determined by the court.

If the court orders an amendment of the articles, the board of directors must send without delay to the enterprise registrar a copy of the order, the articles of amendment required by this Act, and the documents required by the Act respecting the legal publicity of enterprises (chapter P-44.1).Shareholders do not have the right to demand the repurchase of their shares under Chapter XIV if an amendment of the articles is directed by an order of the court.

449 – If authorized by the court under section 445 to act on behalf of the corporation, the applicant is deemed to be the representative of the corporation for the purposes of the proceeding and, to that end, the applicant has a right of access to all relevant information and documents held by the corporation and to any document which is held or was prepared for the corporation by any person, including a mandatary or a provider of goods or services, who rendered a service to the corporation in connection with the action or intervention authorized by the court or which relates to the facts at issue.

The court may, on application, order a person who holds any information or document referred to in the first paragraph to communicate it to the applicant if communication of the information or document appears to be necessary for the purposes of the proceeding or intervention authorized by the court. Before granting the application, the court must give interested persons the opportunity to be heard.

However, any information or document obtained by the applicant under this section is presumed to be confidential and may only be used in connection with the action or intervention authorized by the court and subject to the conditions determined by the court, if any.

Recours pour oppression

450 – An applicant may obtain an order from the court to rectify a situation if the court is satisfied that

(1) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result,
(2) the business or affairs of the corporation or any of its affiliates have been, are or are threatened to be conducted in a manner, or
(3) the powers the board of directors of the corporation or any of its affiliates have been, are or are threatened to be exercised in a manner

(4) that is or could be oppressive or unfairly prejudicial to any security holder, director or officer of the corporation.

451 – In connection with an application under this subdivision, the court may make any order it thinks fit, including

(1) an order restraining the conduct complained of;
(2) an order appointing a receiver;
(3) an order revising the functioning of the corporation by amending the articles or the by-laws or establishing or amending a unanimous shareholder agreement;
(4) an order directing an issue or exchange of securities;
(5) an order making appointments to the board of directors, either to replace all or some of the directors or to increase the number of directors;
(6) an order directing the corporation or any other person to purchase securities of a security holder;
(7) an order directing the corporation or any other person to pay a security holder all or any part of the monies that the security holder paid for securities;
(8) an order varying, setting aside or annulling a contract or a transaction to which the corporation is a party and compensating the corporation or any other party to the contract or transaction;
(9) an order requiring a corporation, within a time specified by the court, to make available to the court or an interested person the financial statements referred to in sections 225 and 226, or an accounting of them in the form determined by the court;
(10) an order compensating a person who has suffered prejudice;
(11) an order directing rectification of the records of a corporation in accordance with sections 456 and 457;
(12) an order dissolving the corporation and winding it up if it has property or obligations;
(13) an order directing an investigation to be made under Division I; and
(14) an order condemning, not only in the case of improper use of procedure but also whenever the court thinks fit, any party to the proceedings to pay, in whole or in part, the professional fees and other costs of any other party.

The corporation may not make any payment to a shareholder under subparagraph 6 or 7 of the first paragraph if there are grounds for believing that it would or could cause the corporation to be unable to pay its liabilities as they become due.

452 – Despite the second paragraph of article 10 of the Code of Civil Procedure (chapter C-25.01), the court may make any order it thinks fit under section 451, whether or not the order has been requested by the applicant. However, if the order has not been requested by the applicant, the court must give the parties an opportunity before the order is made to make representations on the remedy proposed by the court.

453 – If the court, under section 451, orders an amendment of the articles or the by-laws of a corporation or a unanimous shareholder agreement, no other amendment to the articles or by-laws or to the unanimous shareholder agreement may be made without the consent of the court, for the period or under the conditions determined by the court.

If the court orders an amendment of the articles, the board of directors must send without delay to the enterprise registrar a copy of the order, the articles of amendment required by this Act, and the documents required by the Act respecting the legal publicity of enterprises (chapter P-44.1). Shareholders do not have the right to demand the repurchase of their shares under Chapter XIV if an amendment to the articles is directed by an order of the court.

Réparations pour l'acte d'un subordonné

Code civil du Québec

1463 – The principal is bound to make reparation for injury caused by the fault of his subordinates in the performance of their duties; nevertheless, he retains his remedies against them.

Accusation – Déclaration trompeuse

493 – Furthermore, a director or officer who knowingly authorizes or makes an untrue entry in the corporation's registers or other records is liable to a fine of not less than $5,000 and not more than $50,000.

Ordonnance de conformité

460 – If a corporation or a director, officer, employee, mandatory or auditor of a corporation does not comply with this Act, the articles, the by-laws or a unanimous shareholder agreement, any interested person may, without prejudice to any other right that person has, apply to the court for an order directing the corporation or any person concerned to comply. The court may, to that end, make any further order it thinks fit.

Quels sont les articles définissant les moyens de défense que les dirigeants et les administrateurs peuvent invoquer en cas de manquement présumé à ces obligations?

Défense – Manquement au devoir de diligence et de bonne foi

121 – A director of a corporation is presumed to have fulfilled the obligation to act with prudence and diligence if the director relied, in good faith and based on reasonable grounds, on a report, information or an opinion provided by

(1) an officer of the corporation who the director believes to be reliable and competent in the functions performed;
(2) legal counsel, professional accountants or other persons retained by the corporation as to matters involving skills or expertise the director believes are matters within the particular person's professional or expert competence and as to which the particular person merits confidence; or
(3) a committee of the board of directors of which the director is not a member if the director believes the committee merits confidence.

Obligations d'indemnisation

159 – Subject to section 160, a corporation must indemnify a director or officer of the corporation, a former director or officer of the corporation, a mandatary, or any other person who acts or acted at the corporation's request as a director or officer of another group against all costs, charges and expenses reasonably incurred in the exercise of their functions, including an amount paid to settle an action or satisfy a judgment, or arising from any investigative or other proceeding in which the person is involved if

(1) the person acted with honesty and loyalty in the interest of the corporation or, as the case may be, in the interest of the other group for which the person acted as director or officer or in a similar capacity at the corporation's request; and
(2) in the case of a proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful.
(3) The corporation must also advance moneys to such a person for the costs, charges and expenses of a proceeding referred to in the first paragraph.

160 – In the event that a court or any other competent authority judges that the conditions set out in subparagraphs 1 and 2 of the first paragraph of section 159 are not fulfilled, the corporation may not indemnify the person and the person must repay to the corporation any moneys advanced under that section.
Furthermore, the corporation may not indemnify a person referred to in section 159 if the court determines that the person has committed an intentional or gross fault. In such a case, the person must repay to the corporation any moneys advanced.
161 – A corporation may, with the approval of the court, in respect of an action by or on behalf of the corporation or other group referred to in section 159, against a person referred to in that section, advance the necessary monies to the person or indemnify the person against all costs, charges and expenses reasonably incurred by the person in connection with the action, if the person fulfills the conditions set out in that section.

Droit des valeurs mobilières

Quelle commission ou quel ministère est responsable du droit des valeurs mobilières?

Autorité des marchés financiers
https://lautorite.qc.ca/grand-public

Quelle loi régit l'émission de titres par une société commerciale auprès du public dans cette juridiction?

Loi sur les valeurs mobilières, c. V-1.1
https://www.legisquebec.gouv.qc.ca/fr/document/lc/v-1.1

Quels sont les articles de la loi et des règlements connexes qui imposent des obligations aux dirigeants et aux administrateurs d'une société en ce qui a trait à l'information devant être publiée publiquement?

Les dispositions imposant des obligations d'information figurent dans la *Loi sur les valeurs mobilières*, ainsi que dans les règlements suivants, établis en vertu de cette *Loi*, et dans certains règlements sectoriels particuliers :

- Règlement 51-102 *Obligations d'information continue*
  https://lautorite.qc.ca/professionnels/reglementation-et-obligations/valeurs-mobilieres/5-obligations-permanentes-des-emetteurs-et-des-inities-51-101-a-58-201/51-102-obligations-dinformation-continue
- Règlement 51-101 *Activités pétrolières et gazières*
  https://lautorite.qc.ca/professionnels/reglementation-et-obligations/valeurs-mobilieres/5-obligations-permanentes-des-emetteurs-et-des-inities-51-101-a-58-201/51-101-activites-petrolieres-et-gazieres

Prospectus

Loi sur les valeurs mobilières

13 – A prospectus must contain the information and certificates prescribed by regulation.
It must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed.

Divulgation continue

Loi sur les valeurs mobilières

73 – A reporting issuer shall provide periodic disclosure about its business and internal affairs, including its governance practices, timely disclosure of a material change and any other disclosure prescribed by regulation in accordance with the conditions determined by regulation.

États financiers

Règlement 51-102

4.1(1) – A reporting issuer must file annual financial statements that include

(c) A statement of comprehensive income, changes in equity, and a statement of cash flows for

i. The most recently completed financial year

ii. The financial year immediately preceding the most recently completed financial year, if any

(d) A statement of financial position as at the end of each of those periods

4.1(2) – Annual financial statements must be audited.

4.2 – The filing deadline for audited annual financial statements is

(c) For non-venture issuers, the 90th day after the end of its most recently completed financial year.

(d) For venture issuers, the 120th day after the end of its most recently completed financial year.

4.5(1) – The annual financial statements must be approved by the board of directors before filing.

4.3(1) – A reporting issuer must file an interim financial report for each interim period ended after it became a reporting issuer.

1 – "Interim period" = a period commencing on the first day of the financial year and ending 9, 6, or 3 months before the end of the financial year

4.3(3) – If an auditor has not performed a review of an interim financial report, the report must be accompanied by a notice indicating that it has not been reviewed by an auditor.

4.4 – The filing deadline for interim financial reports is

(e) For non-venture issuers, the 45th day after the end of the interim period

(f) For venture issuers, the 60th day after the end of the interim period

4.5(1) – The interim financial report must be approved by the board of directors before filing.

Rapport de gestion

Règlement 51-102

5.1(1) – A reporting issuer must file Management's Discussion & Analysis relating to its annual financial statements and each interim financial report required under Part 4.

5.1(2) – The filing deadline is on or before the earlier of the filing deadline or the actual filing of the annual or interim financial statements, as applicable.

5.4(1) – Issuer must disclose in its annual Management's Discussion & Analysis the designation and number of each class of voting or equity securities (or securities convertible to voting/equity securities) for which there are securities outstanding

5.5(1) – The annual and interim Management's Discussion & Analysis must be approved by the board of directors before being filed.

5.8(2) – A reporting issuer must discuss in its Management's Discussion & Analysis any updates to FLI – events and circumstances likely to cause actual results to differ materially from material FLI relating to a period that is not yet complete that the issuer previously disclosed to the public.

5.8(3) – Sub (2) does not apply if the reporting issuer included the information in a news release and discloses in the Management's Discussion & Analysis that the news release is available on SEDAR.

5.8(4) – Issuer must discuss in its Management's Discussion & Analysis material differences between (a) actual results for the annual or interim period to which the Management's Discussion & Analysis relates, and (b) any previously disclosed FOFI or financial outlook for that period.

Annexe de notice annuelle

Règlement 51-102

6.1 – A reporting issuer that is not a venture issuer must file an annual information form.

6.2 – Filing deadline is on or before the 90th day after the end of the issuer's most recently completed financial year.

Changements importants

Règlement 51-102

1.4 – "Material change" means

(a) a change in the business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer, or

(b) A decision to implement a change made by the board or persons acting in a similar capacity or senior management who believe that confirmation of the board or persons acting in similar capacity is probable.

7.1(1) – If a material change occurs in the affairs of a reporting issuer, the issuer must:

(a) Immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change

(b) As soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.

7.1(2) – Reporting issuer may mark filed material change report as confidential, with written reasons for non-disclosure, if:

(a) In the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by sub (1) would be unduly detrimental to the interests of the reporting issuer, or

(b) The material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable, and senior management of the reporting issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the reporting issuer.

7.1(5) – If a report has been filed under sub (2), the issuer must advise the regulator in writing every 10 days if it believes the report should continue to remain confidential, until the material change is generally disclosed OR the board rejects the decision.

7.1(7) – An issuer must promptly generally disclose the material change if the issuer becomes aware of reasonable grounds to believe that persons are selling securities of the reporting issuer with knowledge of the change.

Mise à disposition des déclarations financières

Loi sur les valeurs mobilières

296 – Any person may have access to all documents required to be filed under this Act or the regulations, except documents filed by a registrant otherwise than pursuant to the requirements prescribed in Title III.
Where the Authority deems that the communication of a document could result in serious prejudice, it may declare the document inaccessible.
This section applies notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information

Information prospective

Règlement 51-102

"Forward-looking information" = disclosure regarding possible events, conditions or financial performance, including future-oriented financial information (FOFI).
"Future-oriented financial information" (FOFI) = presented in format of statement of financial position, comprehensive income or cash flows
"Financial outlook" = not presented in format of statement of financial position, income or cash flows
4A.1 – This Part applies to forward-looking information (FLI) disclosed by a reporting issuer other than orally.
4A.2 – Reporting issuer must not disclose FLI unless the issuer has a reasonable basis for the FLI.
4A.3 – A reporting issuer that discloses material forward-looking information must include disclosure that

(a) Identifies forward-looking information as such
(b) Cautions users of FLI that actual results may vary from the FLI, and identifies material risk factors that could cause actual results to differ materially from the FLI
(c) States the material factors or assumptions used to develop FLI
(d) Describes the issuer's policy for updating FLI if it includes procedures in addition to those in 5.8.

4B.1 – This part applies to FOFI or a financial outlook that is disclosed by a reporting issuer, other than orally.
4B.2 – Must not disclose FOFI or a financial outlook unless based on assumptions that are reasonable in the circumstances. Must be limited to a period for which the information can be reasonably estimated, and use the accounting policies the issuer expects to use for the period covered.
4B.3 – Must also disclose date management approved the FOFI or financial outlook, explain the purpose of the FOFI or financial outlook, and caution readers that the information may not be appropriate for other purposes.

Autres informations

Loi sur les valeurs mobilières

Aide et complicité

Loi sur les valeurs mobilières

Quels sont les articles définissant les conséquences pour les dirigeants et les administrateurs en cas de non-respect des normes de divulgation prévues par la loi?

Responsabilité des administrateurs et des dirigeants pour manquement envers l'entreprise

Loi sur les valeurs mobilières

Quels sont les articles définissant les pouvoirs de l'autorité de réglementation pour prendre des mesures à l'encontre des administrateurs et des dirigeants pour un tel manquement?

Enquête

Loi sur les valeurs mobilières 239 – The Authority may order an investigation

(1) to ascertain whether the Act and the regulations are complied with;
(2) to repress contraventions to the Act or the regulations;
(3) to repress contraventions to the securities legislation of another legislative authority;
(4) within the scope of an agreement entered into under the second paragraph of section 33 of the Act respecting the regulation of the financial sector (chapter E-6.1);
(5) to ascertain whether it would be advisable to request the Superior Court to order the appointment of a receiver in accordance with section 19.1 of the Act respecting the regulation of the financial sector.

Hiérarchie des textes

Loi sur les valeurs mobilières 262.1 – Following a failure to comply with a requirement under securities legislation, the Authority may request the Financial Markets Administrative Tribunal to issue one or more of the following orders against any person in order to remedy the situation or to deprive a person of the profit realized as a result of the non-compliance:

(1) an order requiring the person to comply with
    a) any provision of this Act or the regulations or any other Act or regulation governing securities;
    b) any decision of the Authority under this Act or the regulations;
    c) any regulation, rule or policy of a self-regulating organization or securities exchange, or any decision or order rendered by the Tribunal on the basis of such a regulation, rule or policy;
(2) an order requiring the person to submit to a review by the Authority of the person's practices and procedures and to institute such changes as may be directed by the Authority;
(3) an order rescinding any transaction entered into by the person relating to trading in securities, and directing the person to repay to a security holder any part of the money paid by the security holder for securities;
(4) an order requiring the person to issue, purchase, exchange or dispose of securities;
(5) an order prohibiting the voting or exercise of any other right attaching to securities by the person;
(6) an order requiring the person to produce financial statements in the form required by securities legislation, or an accounting in such other form as may be determined by the Tribunal;
(7) an order directing the person to hold a shareholders' meeting;
(8) an order directing rectification of the registers or other records of the person;
(9) an order requiring the person to disgorge to the Authority amounts obtained as a result of the non-compliance.

Sanctions administratives

273.1 – Where the Financial Markets Administrative Tribunal becomes aware of facts establishing that a person has, by an act or omission, contravened, or aided in the contravention of, a provision under this Act or a regulation made under its authority, the Tribunal may impose

an administrative penalty on the offender and have it collected by the Authority. The amount of the penalty may in no case exceed $2,000,000 for each contravention.
274.1 – The Authority may impose a monetary administrative penalty for a contravention of or failure to comply with the provisions of, or a regulation under, Title II or III, except section 73 as regards timely disclosure of a material change by a reporting issuer, in the cases, on the conditions and in the amounts prescribed by regulation.

Requête auprès des tribunaux

Loi sur les valeurs mobilières 268 – The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act or the regulations.
The application for an injunction is an action.
The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority is not required to give security.
269.2 – The Authority may, where it considers it to be in the public interest, apply to the court for a declaration to the effect that a person has failed to discharge an obligation under this Act or a regulation, and that the person be condemned to pay damages up to the amount of the damage caused to other persons.
The court may also impose punitive damages, or order the person to repay the profits derived as a result of the failure.
An application by the Authority under this section shall be filed in the district in which the residence or principal establishment of the person concerned is situated or, if the person has neither residence nor establishment in Québec, in the district of Montréal.

Accusation – Fausse déclaration

195.2 – Influencing or attempting to influence the market price or the value of securities by means of unfair, improper or fraudulent practices is an offence.
196 – Every person who makes a misrepresentation in any of the following is guilty of an offence:

(1) a prospectus of any type or an offering memorandum provided for in this Act or the regulations;
(2) the information incorporated by reference in a simplified prospectus;
(3) (2.1) a document prepared under a special disclosure scheme referred to in section 64;
(4) (paragraph repealed);
(5) (paragraph repealed);
(6) the disclosure provided by an issuer under section 73 or 74

197 – Every person is guilty of an offence who in any manner not specified in section 196 makes a misrepresentation

(1) in respect of a transaction in a security;
(2) in the course of soliciting proxies or sending a circular to security holders;
(3) in the course of a take-over bid or an issuer bid;
(4) (subparagraph repealed);
(5) in any document forwarded or record kept by any person pursuant to this Act.

For the purposes of this section, a misrepresentation is any misleading information on a fact that is likely to affect the decision of a reasonable investor as well as any pure and simple omission of such a fact.
204.1 – In the case of a distribution without a prospectus in contravention of section 11 or 12 or an offence under section 195.2, 196, 197, 199.1 or 199.2, the minimum fine is $5,000, double the profit realized or one fifth of the sums invested, whichever is the greatest amount. The maximum fine is $5,000,000, four times the profit realized or half the sums invested, whichever is the greatest amount.

208.1 – Every person who makes a distribution of securities in contravention of section 11 or 12 or who contravenes any of sections 187 to 191.1, 195.2, 196 and 197, the first paragraph of sections 199.1 and 199.2 or any of sections 205, 207 and 208 is liable, regardless of the fine provided for in the applicable penal provision, to imprisonment not exceeding five years less one day, notwithstanding articles 231 and 348 of the Code of Penal Procedure

Accusation – Non-conformité

195 – It is an offence

(1) to contravene a decision of the Authority or the Financial Markets Administrative Tribunal;
(2) to fail to fulfil an undertaking with the Authority or the Financial Markets Administrative Tribunal;
(3) to fail to furnish, within the prescribed time, information or a document required by this Act or the regulations;
(4) to fail to appear after summons, to refuse to testify or to refuse to send or remit any document or thing required by the Authority or an agent appointed by it in the course of an investigation;
(5) to attempt, in any manner, to hinder a representative of the Authority in the exercise of his or her functions in the course or for the purposes of an inspection or an investigation;
(6) to provide false documents or information, or access to false documents or information, to the Authority or a member of the personnel of the Authority in the course of activities governed by this Act.

Accusation – Généralités

202 – Unless otherwise specially provided, every person that contravenes a provision of this Act commits an offence and is liable to a minimum fine of $2,000 in the case of a natural person and $3,000 in the case of a legal person or double the profit realized, whichever is the greatest amount. The maximum fine is $150,000 in the case of a natural person and $200,000 in the case of a legal person, or four times the profit realized, whichever is the greater amount.
In determining the penalty, the court shall take particular account of the harm done to the investors and the advantages derived from the offence.
205 – Every officer, director or employee of the principal offender, including a person remunerated on commission, who authorizes or permits an offence under this Act is liable to the same penalties as the principal offender.
208 – Every person who, by act or omission, aids a person in the commission of an offence is guilty of the offence as if he had committed it himself. He is liable to the penalties provided in section 202, 204 or 204.1 according to the nature of the offence.
The same rule applies to a person who, by incitation, counsel or order induces a person to commit an offence.

Existe-t-il des dispositions permettant aux acquéreurs de titres d'une société de se retourner contre les administrateurs et les dirigeants en cas de non-divulgation ou de fausse déclaration?

Durant la diffusion – Action en dommages-intérêts pour fausse déclaration dans un prospectus

Loi sur les valeurs mobilières 217 – A person who has subscribed for or acquired securities in a distribution effected with a prospectus containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.
The defendant may defeat the application only if it is proved that the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.
218 – The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed, from its officers or directors, the dealer under contract to the issuer or holder whose securities were distributed and any person who is required to sign an attestation in the prospectus, in accordance with the conditions prescribed by regulation.
219 – The plaintiff may also claim damages from the expert whose opinion, containing a misrepresentation, appeared, with his consent, in the prospectus.
221 – Rights of action established under sections 217 to 219 may also be exercised if a misrepresentation is contained in

(1) the information incorporated by reference in the simplified prospectus;
(2) the offering memorandum prescribed by regulation;
(3) any other document authorized by the Authority for use in lieu of a prospectus.

225.0.2 – The plaintiff is not required to prove that the plaintiff relied on the document containing a misrepresentation when the plaintiff subscribed for, acquired or disposed of a security.

Après la diffusion – Action en dommages-intérêts pour fausse déclaration dans un prospectus

Loi sur les valeurs mobilières 225.2 – This division applies to any person who acquires or disposes of a security of a reporting issuer or of any issuer closely connected to Québec whose securities are publicly traded. However, this division does not apply to a person that subscribes for or acquires a security during the period of a distribution of securities made with a prospectus or, unless otherwise provided by regulation, under a prospectus exemption granted by this Act, a regulation made under this Act or a decision of the Authority; nor does it apply to a person that acquires or disposes of a security in connection with or pursuant to a take-over bid or issuer bid, unless otherwise provided by regulation, or to a person that makes any other transaction determined by regulation.
225.3 – In this division, unless the context indicates otherwise,
"core document" means a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, a proxy solicitation circular, the issuer's annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;
"document" means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;

“expert” means a person whose profession gives authority to a statement made in a professional capacity by the person, including an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist, advocate or notary, but not including an entity that is a designated credit rating organization defined by regulation;
“influential person” means, in respect of an issuer, a control person, a promoter, an insider who is not a director or officer of the issuer, or an investment fund manager, if the issuer is an investment fund;
“issuer’s security” means a security of an issuer and includes a security the market price or value of which, or payment obligations under which, are derived from or based on a security of the issuer and which is created by a person acting on behalf of the issuer or is guaranteed by the issuer;
“management’s discussion and analysis” means the section of an annual information form, annual report or other document that contains management’s discussion and analysis of the financial situation and operating results of an issuer as required under this Act or the regulations;
“public oral statement” means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed; and
“release” means, with respect to information or a document, to file with a stock exchange, the Authority or an extra-provincial securities commission within the meaning of section 305.1, or to otherwise make available to the public.
225.4 – No action for damages may be brought under this division without the prior authorization of the court.
The request for authorization must state the facts giving rise to the action. It must be filed together with the projected statement of claim and be served by bailiff to the parties concerned, with a notice of at least 10 days of the date of presentation.
The court grants authorization if it deems that the action is in good faith and there is a reasonable possibility that it will be resolved in favour of the plaintiff.
The request for authorization and, if applicable, the application for authorization to institute a class action required under article 574 of the Code of Civil Procedure (chapter C-25.01) must be made to the court concomitantly.
225.5 – On filing the request for authorization with the court, the plaintiff must send a copy to the Authority.
If authorization is granted by the court, the plaintiff must promptly issue a press release disclosing that fact. Within seven days after authorization is granted, the plaintiff must send a written notice to the Authority, together with a copy of the press release. In addition, on filing the statement of claim with the court, the plaintiff must send a copy to the Authority.
225.6 – Any interested party may request that the court declare an authorization perempted if the plaintiff does not commence the action within three months after authorization is granted. Such a request must be served on the parties together with a notice of at least 30 days of the date of presentation.
225.7 – An action may not be abandoned or settled except on the terms set by the court, including terms as to legal costs.
When setting the terms, the court considers whether there are any other actions outstanding under this division or under comparable provisions of extra-provincial securities laws within the meaning of section 305.1 in respect of the same misrepresentation or failure to make timely disclosure.

225.8 – A person that acquires or disposes of an issuer's security during the period between the time when the issuer or a mandatary or other representative of the issuer released a document containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer, each director of the issuer at the time the document was released, and each officer of the issuer who authorized, permitted or acquiesced in the release of the document;
(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer to release the document or a director or officer of the issuer to authorize, permit or acquiesce in the release of the document; and
(3) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document and, if the document was released by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document.

225.9 – A person that acquires or disposes of an issuer's security during the period between the time when a mandatary or other representative of the issuer made a public oral statement relating to the issuer's business or affairs and containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the making of the public oral statement;
(2) the person who made the public oral statement;
(3) each influential person, and each director and officer of an influential person, who knowingly influenced the person who made the public oral statement to make the public oral statement or a director or officer of the issuer to authorize, permit or acquiesce in the making of the public oral statement; and
(4) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the public oral statement and, if the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the public oral statement.

225.10 – A person that acquires or disposes of an issuer's security during the period between the time when an influential person or a mandatary or other representative of the influential person released a document or made a public oral statement relating to the issuer and containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer, if a director or officer of the issuer or the investment fund manager authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
(2) the person who made the public oral statement;
(3) each director and officer of the issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
(4) the influential person and each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
(5) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document or public oral statement and, if the document was released or the public oral statement was made by a person other

than the expert, who consented in writing to the use of the report, statement or opinion in the document or public oral statement.

225.11 – A person that acquires or disposes of an issuer's security during the period between the time when the issuer failed to make timely disclosure of a material change and the time when the material change was disclosed in the manner required under this Act or the regulations may bring an action against

(1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer in the failure to make timely disclosure or a director or officer of the issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

225.12 – The plaintiff is not required to prove that the plaintiff relied on the document or public oral statement containing a misrepresentation or on the issuer having complied with its timely disclosure obligations when the plaintiff acquired or disposed of the issuer's security.

225.13 – For the purposes of sections 225.8 to 225.10, unless the defendant is an expert or the misrepresentation was contained in a core document, the plaintiff must prove that the defendant

(1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
(2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

225.14 – For the purposes of section 225.11, unless the defendant is the issuer, the investment fund manager or an officer of the issuer or the investment fund manager, the plaintiff must prove that the defendant

(1) knew, at the time that a material change report should have been filed, of the change and that the change was a material change, or deliberately avoided acquiring such knowledge at or before that time; or
(2) was guilty of a gross fault in connection with the failure to make timely disclosure.

225.15 – In determining whether a gross fault was committed, the court must consider all relevant circumstances, including

(1) the nature of the issuer;
(2) the knowledge, experience and function of the defendant;
(3) the office held, if the defendant was an officer;
(4) the presence or absence of another relationship with the issuer, if the defendant was a director;
(5) the existence and the nature of any system designed to ensure that the issuer meets its continuous disclosure obligations, and the reasonableness of reliance by the defendant on that system;
(6) the reasonableness of reliance by the defendant on the issuer's officers and employees and on others whose duties would in the ordinary course have given them knowledge of the relevant facts;
(7) the period within which disclosure was required to be made under this Act or the regulations;
(8) in respect of a report, statement or opinion of an expert, any standards, rules or practices applicable to the expert;

(9) the extent to which the defendant knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
(10) the role and responsibility of the defendant in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or in the ascertaining of the facts contained in that document or public oral statement; and
(11) the role and responsibility of the defendant in the decision not to disclose the material change.

225.16 – The court seized of the action may decide that multiple misrepresentations having common subject matter or content may be treated as a single misrepresentation or that multiple instances of failure to make timely disclosure concerning common subject matter may be treated as a single failure to make timely disclosure.

Quels sont les articles définissant les moyens de défense dont disposent les administrateurs et les dirigeants en cas de manquement présumé à l'obligation d'information?

Défense – Fausses déclarations dans les prospectus

Loi sur les valeurs mobilières 220 – The defendant in an action provided for in sections 218 and 219 is liable for damages unless it is proved that

(1) he acted with prudence and diligence, except in an action brought against the issuer or the holder whose securities were distributed, or that
(2) the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

Défense – Responsabilité après diffusion

Loi sur les valeurs mobilières 225.17 – A defendant may defeat an action by proving that, at the time of the transaction, the plaintiff knew that the document or public oral statement contained a misrepresentation or was aware of the material change that should have been disclosed.
An action may also be defeated by proving that the defendant conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that the document or public oral statement would contain a misrepresentation or that the failure to make timely disclosure would occur.

225.18 – In determining whether an investigation was reasonable under the second paragraph of section 225.17, the court must consider all relevant circumstances, including those listed in paragraphs 1 to 11 of section 225.15.

225.19 – A defendant may defeat an action by proving that

(1) the misrepresentation was also contained in a document filed by or on behalf of a third person, other than the issuer, with the Authority or an extra-provincial securities commission within the meaning of section 305.1 or a stock exchange, and was not corrected in another document filed by or on behalf of that third person with the Authority, commission or stock exchange before the issuer or the mandatary or other representative of the issuer released the document or made the public oral statement;
(2) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and
(3) when the document was released or the public oral statement was made, the defendant did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

225.20 – A defendant, other than the issuer, may defeat an action by proving that

(1) the document was released, the public oral statement was made or the failure to make timely disclosure occurred without the defendant's knowledge or consent; and
(2) after the defendant became aware of the misrepresentation or the failure to make timely disclosure but before the misrepresentation was corrected or the material change was disclosed in the manner required under this Act or the regulations,
(a) the defendant promptly notified the board of directors of the issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act or the regulations was made by the issuer within two working days after the notification under subparagraph a, the defendant, unless prohibited by law or by professional confidentiality rules, promptly notified the Authority, in writing, of the misrepresentation in the document or public oral statement or failure to make timely disclosure.

225.21 – For the purposes of sections 225.9 and 225.10, a defendant other than the person who made the public oral statement may defeat an action by proving that the defendant did not become, or should not reasonably have become, aware of the misrepresentation before the plaintiff acquired or disposed of the issuer's securities and by proving that the person who made the public oral statement had no authority other than apparent authority to do so.

225.24 – A defendant, other than an expert, may defeat an action for a misrepresentation in a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, with the expert's written consent to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, by proving that

(1) the defendant did not know and had no reasonable grounds to believe that there was a misrepresentation in the report, statement or opinion of the expert that was included, summarized or quoted from in the document or public oral statement; and

(2) that the report, statement or opinion of the expert was fairly represented in the document or public oral statement.

225.25 – An expert who is the defendant in an action may defeat the action by proving that the written consent previously provided to the use of a report, statement or opinion made by the expert was withdrawn in writing before the document was released or the public oral statement was made.

225.26 – A defendant may defeat an action for a misrepresentation in a document other than a document that is required to be filed with the Authority by proving that, at the time that the document was released, the defendant did not know and had no reasonable grounds to believe that the document would be released.

225.27 – A defendant may defeat an action under section 225.11 by proving that

(1) the issuer, in accordance with this Act or the regulations, filed a material change report with the Authority without making the report public and the issuer had a reasonable basis to file the report on a confidential basis;
(2) if the change remains material, the issuer promptly made the material change public when the basis for confidentiality ceased to exist;
(3) the defendant or issuer did not release a document or make a public oral statement that, due to the undisclosed material change report, contained a misrepresentation; and
(4) if the material change became publicly known in a manner other than the manner required under this Act or the regulations, the issuer promptly disclosed the material change in accordance with this Act or the regulations.

Sphère de sécurité pour les informations prospectives

Loi sur les valeurs mobilières 225.0.1 – A defendant may defeat an action based on a misrepresentation in forward-looking information by proving that

(1) the document containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.22 – A defendant may defeat an action for a misrepresentation in forward-looking information in a document or a public oral statement by proving that

(1) the document or public oral statement containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language clearly identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.23 – A defendant is deemed to have satisfied the requirements of subparagraph 1 of the first paragraph of section 225.22 with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

(1) made a cautionary statement that the public oral statement contains forward-looking information;

(2) stated that the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information and that certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(3) stated that additional information about the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information and about the material factors or assumptions applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information is contained in a readily-available document, and has identified that document.

(4) For the purposes of subparagraph 3 of the first paragraph, a document filed with the Authority, or otherwise generally disclosed, is deemed to be readily available.

Délais de prescription

Loi sur les valeurs mobilières 234 – Any action for rescission or for revision of the price under Title VIII [civil damages] is prescribed by the lapse of three years from the date of the transaction.

235 – Any civil action for damages under Title VIII [civil damages] is prescribed by the lapse of three years from knowledge of the facts giving rise to the action, except on proof that tardy knowledge is imputable to the negligence of the plaintiff.

However, in the case of an action under Division II of Chapter II, the plaintiff is deemed to have knowledge of the facts as of the date on which the document containing the misrepresentation was first released, the oral public statement containing the misrepresentation was made or the material change should have been disclosed.

The prescription provided for by this section is suspended by the filing of a request for authorization with the court under section 225.4; moreover, the suspension of prescription provided for by article 2908 of the Civil Code is effective only as of the filing of that request. The suspension ceases, as the case may be,

(1) when the court has rendered its decision on the request for authorization and the decision can no longer be appealed;
(2) when the plaintiff has discontinued the action; or
(3) at the time provided for in article 2908 of the Civil Code, with respect to a member of the group that is the object of a class action who is excluded from the class action by a judgment subsequent to that authorizing the action under section 225.4.

Quels sont les règlements ou les avis du personnel des ACVM couvrant les obligations d'information en matière climatique?

Projet de Règlement 51-107

https://lautorite.qc.ca/professionnels/reglementation-et-obligations/valeurs-mobilieres/5-obligations-permanentes-des-emetteurs-et-des-inities-51-101-a-58-201/51-107-information-liee-aux-questions-climatiques

Avis 51-358 du personnel des ACVM - Information sur les risques liés au changement climatique

https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2019/2019aout01-51-358-avis-acvm-fr.pdf

Coopératives financières

Quelle agence, quel ministère ou quelle autorité supervise les coopératives financières?

Ministère des Finances du Québec

https://www.quebec.ca/gouvernement/ministere/finances/lois-et-reglements

Quelles sont les lois régissant la création ou l'agrément des coopératives financières dans la juridiction?

Loi sur les coopératives de services financiers

https://www.legisquebec.gouv.qc.ca/fr/document/lc/C-67.3?&cible=

Quel article impose aux administrateurs et aux dirigeants d'une société des obligations à l'égard de ses parties prenantes (actionnaires, créanciers, clients)?

Obligation de gestion

242 – The board of directors shall exercise all the powers necessary to manage, or supervise the management of, the internal affairs and the activities of the credit union, and those powers may be delegated to an officer, a manager or one or more committees of the board.
Except to the extent provided by law, the powers of the board of directors relating to the reception of deposits and the provision of credit and other products and services may not be restricted or withdrawn.
The by-laws of the credit union may determine the powers relating to the internal affairs of the credit union that the board of directors may exercise only with the authorization of the general meeting.

Devoir de diligence et de bonne foi

102 – Subject to this division, the officers of a financial services cooperative are bound by the same obligations as are imposed by the Civil Code on any director of a legal person.
Consequently, in the exercise of their functions, the officers are duty-bound toward the financial services cooperative to act with prudence and diligence, honesty and loyalty and in the interest of the cooperative.
In their capacity as mandataries of the financial services cooperative, the managers are bound, among other things, by the same obligations as are imposed on the directors under the first paragraph.

Devoir de conformité et de gestion prudente

243 – The board of directors shall

(1) ensure that the operations of the credit union and the credit union itself are in compliance with the applicable Acts, regulations, standards, rules of ethics and professional conduct, orders and written instructions;
(2) ensure that the credit union adheres to sound and prudent management practices and, where the credit union is not a member of a federation, establish a policy for sound and prudent management practices;
(3) provide the board of supervision with any personnel it requires to carry out its functions;
(4) furnish to the Authority, on request, a certified copy of any document of the credit union;
(5) ensure the keeping and preservation of the registers;
(6) establish a charging policy for the products and services provided by the credit union and a policy for setting savings and credit interest rates;
(6.1) determine the rate of interest on investment shares and, if the credit union is not a member of a federation, on capital shares;
(7) make or control the investments of the credit union;
(8) insure the credit union against the risks of fire, theft and embezzlement by its officers, managers and other employees, and provide the credit union with civil liability insurance and officers' and managers' liability insurance;
(9) designate the persons authorized to sign contracts or other documents on behalf of the credit union;
(10) at the annual meeting, give an account of its management and submit the annual report;

(11) facilitate the work of the persons responsible for the inspection of the credit union, the supervision of its transactions or the audit of its books and accounts;
(12) ensure that the internal affairs and the activities of the credit union are inspected in accordance with this Act; and
(13) ensure that the executive committee, the audit committee and the special committees of the credit union act in accordance with their powers and duties and with any applicable Acts, regulations, standards and rules of ethics and professional conduct.

Obligation d'adopter une politique d'investissement

468 – A financial services cooperative must follow an investment policy.
The policy must, in particular,
(1) provide for the matching of the respective maturities of the cooperative's investments with its liabilities;
(2) provide for the appropriate diversification of those investments; and
(3) include a description of the types of investments and other financial transactions it authorizes and the limits applicable to them.

The policy a federation must follow applies to the investments made out of the funds it establishes under section 408 unless it has not adopted specific policies for those funds under section 409.
469 – A federation must establish and adopt the investment policy that its member credit unions must follow.
470 – Where a financial services cooperative is a credit union that is not a member of a federation, the cooperative shall establish and adopt its investment policy.
471 – A financial services cooperative that is not a member credit union of a federation shall send its investment policy to the Authority at its request and a federation, the policy that its member credit unions must follow.

Obligation de gestion prudente

66 – A financial services cooperative must apply sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities. In addition, a credit union must comply with the standards adopted by the federation.
66.1 – A financial services cooperative must adhere to sound commercial practices.
Such practices include providing fair treatment to its clientele, in particular by
(1) providing appropriate information;
(2) adopting a policy for processing complaints filed by members of that clientele and resolving disputes with them; and
(3) keeping a complaints register.

66.2 – A financial services cooperative must be able to show to the Authority, and if applicable to the federation of which it is a member, that it adheres to sound and prudent management practices and sound commercial practices.
440.1 – The sound and prudent management practices that the financial services cooperatives belonging to a network must adhere to must, in particular and with regard to their financial management, provide for the maintenance of adequate capital to ensure the network's sustainability.
The management practices that the federation is required to adhere to must, in addition, provide for the maintenance, by the federation, of adequate capital to ensure its own sustainability.
441 – A federation shall ensure that its network maintains adequate capital to ensure its sustainability.

The federation shall adopt standards applicable to credit unions respecting the adequacy of their capital, the elements which compose their capital and the proportion represented by each element.

450. The provisions of this division apply only to credit unions that are not members of a federation.

The principles of sound and prudent management that such a credit union must adhere to in its financial management must, in particular, provide that it maintain adequate capital to ensure its sustainability.

451 – A credit union must maintain adequate capital to ensure its sustainability.

460.1 – The principles of sound and prudent management that a credit union must adhere to with regard to its financial management must provide that it maintain adequate assets to meet its liabilities, as and when they become due.

For the purpose of determining the assets to be maintained, demand deposits are considered payable when and to the extent considered usual in the economic conditions prevailing at the time.

461 – Every credit union that is a member of a federation must maintain adequate liquid assets to meet its liabilities, as and when they become due, in accordance with federation standards.

The federation must adopt standards concerning the assets described in the first paragraph to be maintained by credit unions.

464 – Every credit union that is not a member of a federation must maintain adequate assets to meet its liabilities, as and when they become due.

Quel article prévoit des recours en cas de manquement présumé à ces obligations et qui peut exercer ces recours (autorités réglementaires, actionnaires, clients, créanciers)?

Plaintes

243.1 – The board of directors shall also receive complaints from members, inform the board of supervision when a complaint has to do with the rules of ethics or professional conduct, and reply to the complainant.

A complainant who is not satisfied with the board's reply may file a complaint with the federation.

The federation may make recommendations to the credit union in connection with a complaint filed with it.

Surveillance

257 – The function of the board of supervision is to oversee the operations of the credit union from an ethical, professional and cooperative point of view.

The board of supervision shall, in particular,

(1) ensure that the rules of ethics and professional conduct adopted by the board of ethics and professional conduct of the federation or, where the credit union is not a member of a federation, by the board of supervision itself, are observed;

(2) ensure that the officers and managers of the credit union carry out their responsibilities properly;

(3) ensure that the rights of the members are respected;

(4) ensure that the credit union promotes economic and social education and education in the cooperative field;

(5) ensure that the credit union promotes cooperation between its members, between its members and the credit union and between the credit union and other cooperative bodies;
(6) ensure that the credit union's commitment to the community is carried out efficiently and in conformity with its cooperative values;
(7) ensure that cooperative values are integrated into the credit union's management and commercial practices;
(8) ensure that the admission of members and the suspension or expulsion of members are in compliance with the applicable legislative provisions and the by-laws of the credit union.

548 – Where the Authority is of the opinion that the value of an immovable securing a claim of a financial services cooperative is less than the amount of the loan granted, including accrued interest, or where the Authority considers the immovable to be insufficient security, the Authority may require the cooperative to cause an appraisal of the immovable to be made by an appraiser who must receive the approval of the Authority, or the Authority may itself cause the appraisal to be made.

The Authority may, following such appraisal, reduce the value of the loan entered in the books of the cooperative.

549 – Where the Authority is of the opinion that the market value of the assets of a financial services cooperative is less than the recorded book value, it may require that such cooperative cause an appraisal of the immovable to be made by an appraiser who must receive the approval of the Authority, or the Authority may itself cause the appraisal to be made.

The Authority may, following such appraisal, reduce the value of the loan entered in the books of the cooperative.

Inspection

553 – The Authority shall also ensure that the internal affairs and the activities of a credit union are inspected.

The Authority shall, at least once a year, inspect or commission the inspection of the internal affairs and the activities of a federation.

554 – The Authority shall, at least once a year, inspect or commission the inspection of the internal affairs and the activities of every credit union that is not a member of a federation.

555 – The purpose of the annual inspection is to evaluate the financial policies and practices and the internal control systems of a financial services cooperative, to verify the accuracy of its financial statements and to ensure that it is complying with this Act, the regulations, the by-laws, the standards and the written instructions applicable to it under this Act.

556 – The Authority may, on the Authority's own initiative, conduct or commission any examination and any investigation the Authority considers expedient for the purposes of this Act, into the internal affairs and the activities of any financial services cooperative, issuing corporation referred to in section 475 or holding company of which the cooperative is the holder of control.

In addition, the Authority may order the person in charge of inspections in a federation to conduct such examinations and investigations into the internal affairs and the activities of credit unions as the Authority considers expedient.

557 – The Authority shall, in addition, at the request of a credit union's board of directors or board of supervision, of 100 of its members or of 1/3 of its members, or at the request of the federation, conduct or commission any examination and any investigation the Authority considers expedient into the internal affairs and the activities of the credit union.

The Authority shall render an account of any examination and any investigation to any member of the credit union who so requests, to the board of supervision of the credit union and to the federation.

The expenses incurred for any examination or investigation conducted under this section by the Authority shall be charged to the credit union.

Instructions et lignes directrices

565 – The Authority may establish instructions for a financial services cooperative or a security fund.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it an opportunity to present observations.

565.1 – The Authority may establish guidelines for all financial services cooperatives or a single class of such cooperatives, or for credit unions or a federation of which such credit unions are members.

The federation may also establish a guideline concerning all legal persons belonging to a cooperative group; such a guideline may be addressed to the federation belonging to that group.

Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

Ordonnance de conformité

443 – Where the Authority considers that the capital of a network is not adequate to ensure its sustainability, the Authority may order the federation to adopt to the Authority's satisfaction, within the time prescribed and for the reasons indicated by the Authority, a compliance program for the federation and the credit unions.

Before exercising the powers set out in the first paragraph, the Authority shall notify the federation and give it an opportunity to present observations.

453 – Where the Authority considers that the capital of a credit union is inadequate to ensure its sustainability, the Authority may order the credit union to adopt a compliance program within the time prescribed and for the reasons indicated by the Authority.

Before exercising the power set out in the first paragraph, the Authority shall notify the credit union and give it an opportunity to present observations.

454 – The compliance program shall describe the measures to be implemented by the credit union within the time limits indicated therein.

455 – The compliance program adopted by the credit union must be submitted for approval to the Authority, who may approve it with or without amendment.

456 – If a credit union fails to comply with the order of the Authority, the Authority may establish such compliance program as the Authority considers appropriate.

457 – The credit union is bound to implement the compliance program approved or established by the Authority.

458 – Where the credit union is required to implement a compliance program, it must furnish to the Authority any report the Authority may require on the implementation of the program at such intervals, in such form and of such tenor as the Authority may determine.

459 – The credit union shall cease to solicit or receive deposits until it has

(1) adopted a compliance program;

(2) implemented a compliance program;

(3) furnished to the Authority such report as the Authority may require on the implementation of a compliance program.

567 – The Authority may order a financial services cooperative or a security fund to cease a course of action or to implement specified measures if the Authority is of the opinion that the cooperative or fund is failing to perform its obligations under this Act in full, properly and without delay.

An order concerning two or more legal persons belonging to a cooperative group may be issued against the federation that belongs to the group.

The Authority may, for the same reasons, issue an order against a third person that, on behalf of a financial services cooperative or a security fund, carries on its activities or performs its obligations.

569 – Where, in the opinion of the Authority, the board of supervision of a credit union or the board of ethics and professional conduct of a federation is not exercising its functions in accordance with the provisions of this Act, the Authority may order the board to take the measures indicated by the Authority to remedy the situation.

Requête auprès des tribunaux

573 – The Authority may, by an application, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act.

The application for an injunction constitutes an action.

The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

Sanctions administratives

601.4 – A monetary administrative penalty of $250 in the case of a natural person and $1,000 in any other case may be imposed on

(1) a financial services cooperative

(a) that, in contravention of section 37, fails to send the required documents to the Authority within 30 days following its organization meeting,

(b) that, in contravention of section 131.7, fails to send a report on its complaint processing policy to the Authority,

(c) that, in contravention of section 147, fails to inform the Authority of the resignation of the auditor,

(d) that, in contravention of section 165, fails to send a copy of its annual report to a member who requests it, or

(e) that, in contravention of section 166, fails to send a copy of its annual report to the Authority;

(2) a credit union

(a) that, in contravention of section 218, fails to send the amendments made to its by-laws to the Authority,

(b) that, in contravention of section 221, fails to hold its annual meeting within four months from the end of its fiscal year, or

(c) that, not being a member of a federation, in contravention of section 426, fails to send a report to the Authority;

(3) a federation

(a) that, in contravention of section 303, fails to hold its annual meeting within four months from the end of its fiscal year,

(b) whose by-laws, in contravention of section 330, do not set out the number of times that a board member's term of office may be renewed, whether consecutively or otherwise,

(c) that, in contravention of section 333, fails to give notice to the Authority of a change made among the directors of the board of directors,

(d) whose board of ethics and professional conduct, in contravention of section 353, fails to transmit a yearly report of its activities in matters of ethics and professional conduct to the Authority,
(e) that, in contravention of section 376, fails to transmit its by-laws and the standards it has adopted to the Authority,
(f) that, in contravention of section 385.6, fails to report to the Authority on the number of complaint records it has registered in the register of complaint records submitted for its examination and their nature,
(g) whose audit and inspection commission, in contravention of section 390, fails to send the Authority a report on its activities up to the closing date of its last fiscal year,
(h) that, in contravention of section 425, fails to send a copy of its annual report to a member who requests it,
(i) that, in contravention of section 426, fails to send a report to the Authority, or
(j) that, in contravention of section 427 or 463, fails to send its financial statements to the Authority;
(4) a security fund that, in contravention of section 528, fails to send a statement of operations for the fiscal year just ended to the Authority, prepared in the form prescribed by the Authority and in compliance with the requirements set out in sections 529 and 530;
(5) an auditor, other than the auditor referred to in the fifth paragraph of section 152, who, in contravention of that section, fails to send the required report to the Authority; or
(6) a financial services cooperative, a member of its financial group or its auditor if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

601.5 – A monetary administrative penalty of $500 in the case of a natural person and $2,500 in any other case may be imposed on

(1) a financial services cooperative
(a) that, in contravention of section 66.1, fails to adopt a complaint processing policy,
(b) that, in contravention of section 66.1, fails to keep the complaints register prescribed by that section, or
(c) that, in contravention of section 470, fails to adopt an investment policy;
(2) a credit union
(a) that has not, in contravention of section 253.1, established an audit committee or that has established one whose composition contravenes that section, unless otherwise provided in the by-laws of the Group made under section 547.2, or
(b) whose board of supervision, in contravention of section 259, fails to adopt rules of ethics and professional conduct;
(3) a federation
(a) that fails to perform its obligations under an undertaking given to the Authority under section 81,
(b) whose board of ethics and professional conduct, in contravention of sections 346 and 347, fails to adopt rules of ethics and professional conduct,
(c) whose board of ethics and professional conduct, in contravention of section 355, fails to notify the Authority in writing within five days of its decision to suspend a director or a manager,

(d) that, in contravention of section 385.1, fails to adopt a policy on the examination of complaint records,
(e) that, in contravention of section 385.2, fails to keep the register of complaint records submitted for its examination prescribed by that section,
(f) whose board of directors, in contravention of section 388, fails to establish an audit and inspection commission formed in accordance with that section,
(g) that, in contravention of section 469, fails to establish the investment policy to be followed by its member credit unions, or
(h) that, belonging to the Group, fails to revise the recovery plan of the Group, in contravention of section 547.24;
(4) a security fund that, in contravention of section 517, fails to adopt an investment policy approved by the Authority; or
(5) the chief manager of a credit union who, in contravention of section 96, does not resign from that position if he or she becomes president or vice-president of the credit union's board of directors.

Accusations

604 – Every person who omits or refuses to furnish any information, report or other document that is required to be furnished under this Act is guilty of an offence.
605 – Every person who furnishes to the Minister, the Authority or any other person information, reports or other documents that are required under this Act, which the person knows to be false or misleading, is guilty of an offence.
606 – Every person who omits or refuses to keep a book or register required under this Act or to make a required entry therein is guilty of an offence.
607 – Every person who makes an entry required under this Act in a book or register, which the person knows to be false or misleading, is guilty of an offence.
608 – Every person who hinders a person who, as part of the person's duties, is making an inspection, an audit, an examination or an investigation under this Act is guilty of an offence.
609 – Every person who fails to comply with an order issued by the Authority under section 23, 443, 453, 567, 569 or 571 is guilty of an offence.

Présomptions en faveur de la personne faisant affaire avec une coopérative

70 – Persons doing business with a financial services cooperative are not presumed to have knowledge of the contents of a document concerning that cooperative by reason only that the document has been registered or is available for examination according to law.
71 – Persons doing business with a financial services cooperative may presume that
(1) the cooperative is pursuing its mission and exercising its powers in accordance with its articles and by-laws;
(2) the documents transmitted to the Minister or the Authority and registered under this Act contain true information;
(3) the officers and managers of the cooperative are validly holding office and lawfully exercising the powers arising therefrom;
(4) the documents of the cooperative issued by one of its officers or managers or other mandataries are valid.

Quel article énonce les moyens de défense dont disposent les administrateurs et les dirigeants pour ces manquements présumés?

Défense – Manquement au devoir de diligence et de bonne foi

103 – An officer of a financial services cooperative is presumed to have fulfilled the obligation to act with prudence and diligence if the officer relied, in good faith and on reasonable grounds, on a report, information or an opinion provided by

(1) a manager of the financial services cooperative or, if applicable, of another cooperative that is a member of the same network as that cooperative, who the officer believes to be reliable and competent in the functions performed;
(2) legal counsel, professional accountants or other persons retained by the cooperative or a member of the network to which it belongs as to matters involving skills or expertise the officer believes are matters within the particular person's professional or expert competence and as to which the particular person merits confidence;
(3) a committee of the board of directors of which the officer is not a member if the officer believes the committee merits confidence; or
(4) in the case of an officer of a credit union that is a member of a federation, the federation or a person it retains.

Défense - Présomptions en faveur de la personne faisant affaire avec une coopérative

72 – Sections 70 [actual knowledge] and 71 [presumption of compliance] do not apply to persons in bad faith or to persons who ought to have had knowledge of the situation by virtue of their position within or their dealings with the financial services cooperative.

Délais de prescription

601.11 – The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

613.3 – Penal proceedings for an offence under any of sections 602 to 611 or under a provision of a regulation the violation of which constitutes an offence under subparagraph 15 of the first paragraph of section 599 are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary.

Indemnisation

107 – A financial services cooperative shall assume the defence of its officers and managers, and of persons who have acted in that capacity for the cooperative, who are prosecuted by a third person for an act done in the performance of their duties and shall pay any injury resulting from that act, unless they have committed a gross negligence or a personal fault separable from the performance of their duties.

In penal or criminal proceedings, however, the cooperative shall assume payment of the expenses of its officers and managers, and of persons who have acted in that capacity for the cooperative, only where they had reasonable grounds to believe that their conduct was in conformity with the law or where they have been discharged or acquitted, or where the proceedings have been withdrawn or dismissed.

108 – A financial services cooperative shall assume the expenses of its officers or managers, or of persons who have acted for it in that capacity, whom it prosecutes for an act done in the performance of their duties if it loses its case and the court so decides.
If the cooperative wins its case only in part, the court may determine the amount of the expenses it shall assume.

Compagnies d'assurance

Quelle agence, quel ministère ou quelle autorité supervise les compagnies d'assurance?

AMF Autorité des marchés financiers
https://lautorite.qc.ca/grand-public/assurance

Quelles sont les lois régissant la création ou l'agrément des compagnies d'assurance dans la juridiction?

Loi sur les assureurs, c. A-32.1
https://www.legisquebec.gouv.qc.ca/fr/document/lc/A-32.1

Quel article impose aux administrateurs et aux dirigeants de l'entreprise des obligations à l'égard de ses parties prenantes (actionnaires, créanciers, clients)?

Obligation de gestion prudente – Assureurs

74 – An authorized insurer must adhere to sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities.
With respect to the insurer's financial management, such practices must, in particular, provide that the insurer maintain

(1) adequate assets to meet its liabilities, as and when they become due; and
(2) adequate capital to ensure its sustainability.

75 – An authorized insurer must be able to show to the Authority that it adheres to sound and prudent management practices.

Obligation de gestion prudente – Administrateurs

94 – The board of directors must ensure that the authorized insurer adheres to sound commercial practices and sound and prudent management practices.
To that end, it must entrust certain directors it designates or a committee of such directors with the responsibility of seeing that such practices are adhered to and situations contrary to such practices are detected.
Within three months after the closing date of the insurer's fiscal year, the directors or the committee, as the case may be, report to the board of directors on the performance of the responsibility entrusted to them or it and, if applicable, on the other activities they or it carries on for the insurer.
95 – A director designated in accordance with section 94 or the committee provided for in that section, as the case may be, must, on becoming aware of a situation that is likely to appreciably deteriorate the authorized insurer's financial position, of another situation that is contrary to sound and prudent management practices or of a situation that is contrary to sound commercial practices, notify the board of directors in writing.
The board of directors must then see to it that the situation is promptly remedied.

96 – The director or committee that notified the board of directors in accordance with section 95 must, on finding that the situation mentioned in the notice has not been corrected, send the Authority a copy of the notice given under that section.
A description of any relevant events that have occurred since the notice was drafted and any other information the director or committee considers relevant must be sent with the notice.
97 – A director designated in accordance with section 94 or a director on the committee provided for in that section, as the case may be, who, in good faith, notifies the board of directors or the Authority in accordance with section 95 or 96 incurs no civil liability for doing so. The same is true for any person who, in good faith, provides information or documents to one or more of those directors and for a director who makes a declaration under section 93.

Obligation d'adopter une politique d'investissement

82 – An authorized insurer must adopt an investment policy approved by its board of directors.
The investment policy must, in particular,

(1) provide for the matching of the respective maturities of the insurer's investments with the insurer's liabilities;
(2) provide for the appropriate diversification of those investments; and
(3) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to them.

The insurer must send its investment policy to the Authority at the Authority's request.

Quel article prévoit des recours en cas de manquement présumé à ces obligations et qui peut exercer ces recours (autorités réglementaires, actionnaires, clients, créanciers)?

Instructions

462 – The Authority may establish instructions for an authorized insurer or a federation of which such an insurer is a member.
Instructions must be in writing and must be specific to the addressee, but need not be published.
The Authority must, before sending instructions, notify the addressee and give it an opportunity to submit observations.
463 – The Authority may establish guidelines for all authorized insurers, a single class of such insurers or a federation of which such insurers are members.
Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

Requête auprès des tribunaux

477 – The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.
The application for an injunction constitutes a proceeding in itself.
The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

Ordonnance de conformité

77 – The Authority may, if it considers that an authorized insurer's capital is not adequate to ensure the insurer's sustainability, order the insurer to adopt a compliance program within the time it prescribes and for the reasons it specifies.
Before exercising the power provided for in the first paragraph, the Authority must notify the insurer and give it at least 10 days to submit observations.

The Authority may not order an authorized insurer other than a Québec insurer to adopt such a program if it may hinder measures taken by the insurer's home regulator.

78 – The compliance program describes the measures that must be implemented by the authorized insurer within the time limits specified in it.

79 – The compliance program adopted by the authorized insurer is submitted for approval to the Authority.

80 – The authorized insurer is required to implement the compliance program approved by the Authority.

81 – An authorized insurer that is required to implement a compliance program must provide the Authority with any report the Authority may require on the implementation of the program at such intervals, in such form and with such content as the Authority determines.

Sanctions administratives

491 – A monetary administrative penalty of $250 in the case of a natural person and $1,000 in any other case may be imposed on

(1) an authorized insurer

(a) that, in contravention of section 58, fails to send the Authority a report on its complaint processing and dispute resolution policy,

(b) that, in contravention of section 66, fails to notify the Authority of the fact that it has started or ceased doing business with a distributor or fails to send the Authority the list of the contracts with respect to which a distributor will be dealing with clients or participants or any change to that list,

(c) that, in contravention of section 71, uses an insurance policy relating to the ownership of motor vehicles without having had its form and terms approved by the Authority,

(d) whose ethics committee, in contravention of section 107, fails to send the Authority a report on its activities,

(e) that, in contravention of section 119, fails to notify the Authority of the end of the actuary's or auditor's term,

(f) that, in contravention of section 132, fails to send the Authority an annual statement of the position of its affairs,

(g) that, in contravention of section 133, fails to send the Authority the financial statements, an auditor's or actuary's report, or the certificate referred to in that section, or

(h) that, being Lloyd's, fails to send the Authority the list of its underwriters in Québec or does not keep that list up to date in contravention of section 137;

(2) an insurance company that, in contravention of section 225 of the Business Corporations Act (chapter S-31.1), fails to send its financial statements to a member who requests them;

(3) a self-regulatory organization that, in contravention of section 370, fails to send holders of an insurance contract underwritten by the organization the annual report of its insurance fund;

(4) a federation of mutual companies that

(a) in contravention of section 394, fails to report to the Authority on the number of complaint records it has registered in the register of complaint records submitted for its examination and their nature,

(b) in contravention of section 449, fails to send its annual report to its members, or

(c) in contravention of section 451, fails to send the Authority an annual statement under section 450; or

(5) an authorized insurer, the holder of control of the insurer, a member of its financial group, its actuary or its auditor if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

492 – A monetary administrative penalty of $2,500 may be imposed on

(1) an authorized insurer

(a) that fails to perform its obligations under an undertaking given to the Authority under section 40, 102, 145 or 155,

(b) that, in contravention of section 50, fails to adopt a complaint processing policy or that, in contravention of section 82, fails to adopt an investment policy approved by its board of directors or whose ethics committee, in contravention of section 104, fails to adopt rules of ethics,

(c) that, in contravention of section 50, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(d) if, in contravention of section 94, neither a director nor a committee has reported to the board of directors on the responsibility conferred on the director or committee of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected, or

(e) that, without the Authority's authorization under section 102, has not, in contravention of section 100, established an audit committee or an ethics committee or has established one whose composition contravenes section 101;

(2) an insurance company that

(a) fails to perform its obligations under an undertaking given to the Authority under section 243, or

(b) is bound by insurance contracts conferring rights to policy dividends on its beneficiaries without having established, in contravention of section 543, a policy approved by its board of directors for determining the dividend and the bonuses payable to the holders of such contracts;

(3) a self-regulatory organization that, in contravention of section 365, fails to establish an investment policy approved by its board of directors for its insurance fund; or

(4) a federation of mutual companies that

(a) in contravention of section 389, fails to establish a policy on the examination of complaint records,

(b) in contravention of section 390, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(c) in contravention of section 399, fails to establish an audit committee within its board of directors,

(d) in contravention of section 400, has as its president or vice-president or as the chair or vice-chair of its board of directors its general manager or the general manager of one of its member companies, or

(e) in contravention of section 426, fails to establish an investment policy approved by its board of directors for its guarantee fund.

Accusations

515 – Anyone who

(1) contravenes the capital maintenance rules prescribed by any of sections 245 to 247, 264 and 265,
(2) holds themselves out as an insurer or uses a name that includes a word or combination of words listed in the first paragraph of section 489 without being permitted to do so by the second paragraph of that section,
(3) carries on insurer activities without the Authority's authorization although the authorization is required under this Act,
(4) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Minister or the Authority, a member of the Minister's or Authority's staff or a person appointed by the Minister or Authority in the course of activities governed by this Act, or
(5) hinders or attempts to hinder, in any manner, the exercise of a function by a member of the Authority's staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of $5,000 to $50,000 in the case of a natural person and $15,000 to $150,000 in any other case.

519 – If an offence under this Act is committed by a director or officer of a legal person or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

521 – Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

522 – In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

523 – If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.

524 – In determining the penalty, the judge may take into account aggravating factors such as

(1) the intentional, negligent or reckless nature of the offence;
(2) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;
(3) the offender's attempts to cover up the offence or failure to try to mitigate its consequences;
(4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and
(5) the offender's failure to take reasonable measures to prevent the commission of the offence or mitigate its consequences despite the offender's ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

Quel article énonce les moyens de défense dont disposent les administrateurs et les dirigeants pour ces manquements présumés?

Délais de prescription

527 – Penal proceedings for offences under this Act are prescribed by three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.
The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of that date, in the absence of any evidence to the contrary.

Caisses de retraite

Quelle agence, quel département ou quelle autorité supervise les régimes de retraite basés sur l'emploi enregistrés dans la juridiction?

Retraite Québec
https://www.rrq.gouv.qc.ca/fr/programmes/regime_rentes/Pages/regime_rentes.aspx

Quelle loi régit la création de régimes de retraite basés sur l'emploi dans la juridiction ?

Loi sur les régimes complémentaires de retraite
https://www.legisquebec.gouv.qc.ca/fr/document/lc/R-15.1

Quels sont les articles de loi et de règlements qui imposent des obligations aux personnes chargées de l'administration du régime et de son fonds en matière d'investissement des actifs?

Obligation de gestion

147 – Every pension plan shall, from its registration, be administered by a pension committee composed of at least one member, designated as and when provided in the pension plan, who is neither a party to the plan nor a third person to whom, under section 176, a loan may not be granted, and the following members:

(1) one member designated by the active members at the meeting held pursuant to section 166 or, in the absence of such a designation, one plan member designated as and when provided in the plan; and

(2) one member designated by the non-active members and beneficiaries at that meeting or, in the absence of such a designation, one plan member or beneficiary designated as and when provided in the plan.

156 – Every member of the pension committee is presumed to have approved any decision made by the other members. He shall be solidarily liable therefor with the other members unless he expresses his dissent without delay.
He is also presumed to have approved any decision made in his absence unless he makes his dissent known to the other members, in writing, within a reasonable time after becoming aware of the decision.

Devoir de diligence

151 – The pension committee shall exercise the prudence, diligence and skill that a reasonable person would exercise in similar circumstances; it must also act with honesty and loyalty in the best interest of the members or beneficiaries.

The members of the pension committee shall use in the administration of the pension plan all relevant knowledge or skill that they possess or, by reason of their profession or business, ought to possess.

Obligation de se conformer à la loi

180 – Every person who makes an investment otherwise than according to law is, by that sole fact and without further proof of wrongdoing, liable for any resulting loss.

The members of a pension committee who approved such an investment are, by that sole fact and without further proof of wrongdoing, solidarily liable for any resulting loss.

However, such persons incur no liability under this section if they acted in good faith on the basis of an expert's opinion.

Obligation en matière d'investissements

168 – Only the pension committee, the person or body to whom or which that power has been delegated or, if the pension plan so provides, the members of the plan may decide how the assets of the plan are to be invested. Where the plan authorizes members to distribute all or part of the amounts credited to them among various investments, it must offer a minimum of three investment options which not only are diversified and involve varying degrees of risk and expected return but also allow the creation of portfolios that are generally well-adapted to the needs of the members.

Investments shall be made according to law and investments selected by the pension committee or the delegatee shall, in addition, be made in conformity with the investment policy.

171.1 – Unless it is reasonable in the circumstances to act otherwise, the pension committee must endeavour to constitute a diversified portfolio so as to minimize the risk of major losses.

Obligation d'adopter une politique d'investissement

169 – The pension committee shall establish and adopt a written investment policy, giving particular consideration to the type of pension plan and its characteristics, financial obligations and funding policy.

170 – Unless Retraite Québec authorizes, on the conditions it fixes, that the investment policy be simplified, the policy must set out

(1) the expected rate of return;
(2) the degree of risk involved in the investment portfolio, particularly as regards price fluctuations;
(3) liquidity requirements;
(4) the proportion of assets that may be invested in debt securities and equity securities, respectively;
(5) the permitted categories and sub-categories of investments;
(6) investment portfolio diversification measures conducive to an overall reduction of the degree of risk;
(7) rules and a time schedule applicable to the valuation of the investment portfolio and to the monitoring of the management of the investment portfolio and those applicable to the review of the investment policy.

Unless they are already set out in the plan, the policy must also include

(1) rules regarding the solvency of borrowers and the security required for granting loans out of the assets, in particular the lending of securities and hypothecary loans;
(2) rules applicable to the exercise of the voting rights attached to the securities forming part of the assets;
(3) the basis for the valuation of investments that are not traded on an organized market;
(4) rules applicable to the use of futures contracts, options, share purchase warrants or share rights or other financial instruments;
(5) rules regarding the loans that may be raised by the pension committee.
(6) In the event of a discrepancy between the internal by-laws and the investment policy as regards any matter mentioned in this section, the latter prevails.

Obligation d'inscription du régime et des modifications connexes

24 – Every pension plan and every amendment to a pension plan shall be registered with Retraite Québec.

The employer or, where a pension committee has been formed, the pension committee shall file an application for registration with Retraite Québec, accompanied with

(1) a copy of the plan or amendment, certified by the employer or by the committee, and, where the plan is insured, a copy of the insurance contract, certified by the insurer.

Obligation d'adopter des arrêtés

151.2 – The pension committee shall adopt internal by-laws establishing its rules of operation and governance. The committee ensures that they are complied with and reviews them regularly.

The internal by-laws determine, in particular,

(1) the duties and obligations of the committee members;
(2) the rules of ethics to which those persons are subject;
(3) the rules governing the appointment of the chair, vice-chair and secretary;
(4) the procedure for meetings and the frequency of meetings;
(5) the measures to be taken to provide professional development to committee members;
(6) the measures to be taken to manage risks;
(7) internal controls;
(8) the books and registers to be kept;
(9) the rules to be followed when selecting, remunerating, supervising or evaluating delegates, representatives or service providers; and
(10) the standards that apply to the services rendered by the committee, namely the standards on communicating with plan members and beneficiaries.

In the event of a discrepancy between the text of the pension plan and the text of the internal by-laws as regards the operation and governance of the committee, the latter prevails. However, in the case of the following subjects, the internal by-laws prevail only if the text of the pension plan expressly so provides:

(1) the rules governing the appointment of the chair, vice-chair and secretary of the pension committee as well as their duties and obligations;
(2) quorum and the granting of a casting vote at committee meetings; and
(3) the proportion of committee members who must participate in a decision in order for it to be valid.

Obligation de fournir les obligations prescrites

111 – The pension committee shall provide to each member or employee eligible for membership a written summary of the pension plan, including each of the particulars referred to

in the second paragraph of section 14, together with a brief description of a member's rights and obligations under the plan and this Act and a statement of the principal advantages of membership in the pension plan.

The documents shall be provided within 90 days following

(1) the date on which the employee becomes eligible for membership under the plan or becomes a member; or

(2) the date of registration of the pension plan.

(3) The employer shall transmit, in writing, to the pension committee such information concerning employees eligible for membership as is necessary for the purposes of this section.

Quel article prévoit des recours en cas de manquement présumé à ces obligations et qui peut exercer ces recours?

Prise en charge de l'administration

183 – Retraite Québec may, for the period it fixes, assume the administration of all or part of a pension plan or entrust it to the person or body it designates in any of the following cases:

(1) where Retraite Québec or the investigator it has designated is making an inquiry into the plan's conformity with the law or into its administration;

(2) where, in the opinion of Retraite Québec, the plan or the administration thereof is not in conformity with this Act;

(3) where, in the opinion of Retraite Québec, the pension committee, a member of that committee, a delegatee or, where the member or delegatee is a legal person or a group without juridical personality, any of its directors has committed a malversation, a breach of trust or other form of misconduct;

(4) where Retraite Québec becomes aware that the pension committee or a person to whom it has delegated powers has failed to comply with an order issued by Retraite Québec.

Pouvoirs d'inspection et d'instruction

246 – To exercise its functions under this Act, Retraite Québec, in addition to the other powers conferred on it by this Act, the Act respecting Retraite Québec (chapter R-26.3) and the Act respecting the Québec Pension Plan (chapter R-9), may

(1) (paragraph repealed);

(2) provide information in the form of general or specific instructions regarding the administration of this Act;

(3) carry out the inspection of any pension plan;

(4) prepare, or cause to be prepared, any document prescribed or required by this Act and not furnished in accordance with this Act or the requirements of Retraite Québec, at the expense of the person who is required to furnish it;

(5) in the case of a pension plan to which Chapter X does not apply, require from the pension committee or the insurer, on the conditions and within the time limits established by Retraite Québec, any document or information it considers necessary to measure the funding or solvency of the plan;

(6) require from the pension committee or the insurer, on the conditions and within the time limits established by Retraite Québec, any document or information it considers necessary to ascertain whether a pension plan, an actuarial valuation or a document required under this Act or required by Retraite Québec is in conformity with this Act or with the requirements of Retraite Québec;

(6.1) require, subject to the conditions and within the time it fixes, that the pension committee or any party to a contract referred to in section 92 or to a pension plan or annuity contract to which sums may be transferred under section 98 provide it with any document or information Retraite Québec considers necessary for ascertaining that the requirements imposed by this Act in respect of the plan or contract are complied with

Injonction de prendre des mesures collectives

248 – Retraite Québec may make an order directing the pension committee, the person exercising a delegated power or any party to the pension plan to take any remedial measure determined by Retraite Québec within the time and on the conditions it fixes, where it is of the opinion that

(1) His or its action is contrary to sound financial practices;

(2) The assumptions, methods or scenarios used

— for the actuarial valuation of the plan,

— for the fixing of the interest rate applicable to contributions, or

— in the preparation of a report or any other document required by Retraite Québec, do not accord with generally accepted actuarial or accounting principles;

(3) the assumptions, methods or scenarios used are inappropriate for the type of plan concerned or in view of its obligations, the financial position of the pension fund or the investment policy;

(4) (subparagraph repealed);

(5) the pension plan or its administration is not in compliance with this Act, for instance by reason of the fact that the plan is not being wound up in accordance with the provisions of Chapter XIII; or

(6) the content of a document provided for in this Act or required by Retraite Québec is not in compliance with the requirements of this Act or of Retraite Québec.

In addition, if Retraite Québec considers it necessary in the best interests of the members and beneficiaries, it may order any person who has custody, possession or control of funds, securities or other assets of a pension plan not to dispose of them without the authorization of Retraite Québec or otherwise than in accordance with the conditions it fixes.

Requête auprès des tribunaux

255 – Retraite Québec may apply to a judge of the Superior Court to obtain an injunction in respect of any matter contemplated by this Act.

The application for an injunction shall in itself constitute an action.

The procedure provided for in the Code of Civil Procedure (chapter C-25.01) applies except that Retraite Québec cannot be required to give security.

Dispositions pénales

257 – Every person is liable to a fine of $500 to $25,000 who:

(1) contravenes any provision of the first paragraph of section 14 or 16, sections 25, 26, 39, 41, 42, 43, 51, 58, 119, 119.1, 142.5, 158, 159, 161, 166, 168, 169, 171.1 to 176, 179 and 210, subparagraph 1 of the first paragraph of section 252 and section 307;

(1.1) permits the allocation of all or part of the surplus assets determined upon termination of a pension plan otherwise than as provided in subdivision 4.1 of Division II of Chapter XIII;

(2) contravenes any regulatory provision made under subparagraph 9 of the first paragraph of section 244 where, for the purposes of subparagraph 15 of the first paragraph of the said section, such contravention is punishable by a penalty;

(3) contravenes any order issued by Retraite Québec under section 35, 240.4 or 248;

(4) makes a false declaration, hinders or attempts to hinder Retraite Québec, a member of its personnel, a provisional administrator, any person to whom Retraite Québec has delegated a power or any inspector appointed by Retraite Québec, in the carrying out of its or his duties;

(5) makes a false declaration for the purpose of obtaining

a. a temporary pension under section 91.1;

a.1 a variable payment life pension provided for in section 90.2;

a.2 the payment in one or more instalments provided for in section 90.1;

b. a temporary or life pension or a payment in one or more instalments under section 92;

c. a temporary or life pension or a lump-sum payment payable under a pension plan or annuity contract prescribed by regulation pursuant to the fourth paragraph of section 98.

259 – Where any of the offences under sections 257 and 258 is committed by a legal person, the amount of the fine is three times the amount prescribed.

260 – Every person who, through encouragement or advice or by his orders, incites another person to commit an offence under section 257 or 258 is guilty of the offence and of any other offence committed by the other person as a result of such encouragement, advice or orders, if he knew or ought to have known that it would probably result in the commission of the offence.

261 – Every person who, by his act or omission, aids another person to commit an offence under section 257 or 258 is guilty of the offence as if he had committed it himself, if he knew or ought to have known that his act or omission would probably result in aiding the commission of the offence.

262 – In the event of a subsequent offence, the fine is twice the amount prescribed for a first offence.

263 – In determining the fines, the court shall take into account the prejudice involved and the benefits derived from the offence, if any.

Quel article énonce les moyens de défense à la disposition des personnes qui auraient manqué à ces obligations?

Défense – Devoir de diligence

151.1 – The pension committee is presumed to have acted with prudence where it acted in good faith on the basis of an expert's opinion.

Défense – Obligation de se conformer à la loi

180 – Every person who makes an investment otherwise than according to law is, by that sole fact and without further proof of wrongdoing, liable for any resulting loss.

The members of a pension committee who approved such an investment are, by that sole fact and without further proof of wrongdoing, solidarily liable for any resulting loss.

However, such persons incur no liability under this section if they acted in good faith on the basis of an expert's opinion.

Saskatchewan

Corporate Law

What department of the government has oversight of the corporation statute?

Minister of Justice and Attorney General
https://www.saskatchewan.ca/government/government-structure/ministries/justice#programs-and-services

What statute governs the incorporation of business corporations in the jurisdiction?

The Business Corporations Act, 2021, SS 2021, c 6
https://publications.saskatchewan.ca/#/products/113407

What sections impose duties on the corporation's directors and officers?

The Business Corporations Act – Part 9

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

The Business Corporations Act – Part 18

What sections set out the defences officers and directors may assert against alleged violations of those duties?

The Business Corporations Act – Section 9-24

Securities Law

What commission or department is responsible for securities law?

Financial and Consumer Affairs Authority of Saskatchewan
https://fcaa.gov.sk.ca/

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

The Securities Act, 1988, SS 1988-89, c S-42.2
https://publications.saskatchewan.ca/#/products/872

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*

https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/securities-industry-participants/securities-laws/regulatory-instruments/part-5-ongoing-requirements-for-issuers-and-insiders/51-disclosure-general/51-102-continuous-disclosure-obligations-national-instrument

- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/securities-industry-participants/securities-laws/regulatory-instruments/part-5-ongoing-requirements-for-issuers-and-insiders/51-disclosure-general/51-101-standards-of-disclosure-for-oil-and-gas-activities-national-instrument

Prospectus

Securities Act – Part XI

Management's Discussion & Analysis

National Instrument 51-102 – Part 5

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National Instrument 51-102 – Part 6

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National Instrument 51-102 – Part 4

Material Changes

Securities Act – Section 84.1
National Instrument 51-102 – Part 7

Making Filings Available

Securities Act – Section 152

Misleading Disclosure

Securities Act – Section 55.11

Forward-Looking Information

National Instrument 51-102 – Part 4A

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Securities Act – Part XVIII

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Securities Act – Part XVIII

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act – Part XIX

After Distribution – Action for Damages for Misrepresentation

Securities Act – Part XVIII.1

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Misrepresentation in Prospectus

Securities Act – Part XIX

Defence – Misrepresentation After Distribution

Securities Act – Part XVIII.1

Safe Harbour for Forward-Looking Information

Securities Act – Section 139.1

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act – Section 153(2)

Limitation Periods

Securities Act – Section 136

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/securities-industry-participants/securities-laws/regulatory-instruments/part-5-ongoing-requirements-for-issuers-and-insiders/51-disclosure-general/51-107-disclosure-of-climate-related-matters-national-instrument

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://fcaa.gov.sk.ca/public/plugins/pdfs/3461/51_358_csa_staff_notice_august_1_2019.pdf

Credit Unions and Caisses Populaires

What agency, department or authority supervises credit unions and caisses populaires?

Financial and Consumer Affairs Authority of Saskatchewan
https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/credit-unions-saskcentral

What statutes govern the creation or licencing of credit unions and caisses populaires in the jurisdiction?

Credit Union Act, 1998, C-45.2
https://publications.saskatchewan.ca/#/products/445

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

Credit Union Act – Section 93

Duty of Care and Good Faith

Credit Union Act – Section 112

Duty of Confidentiality

Credit Union Act – Section 114

Duty to Comply With Law

Credit Union Act – Section 45

Duty to Disclose in Offering Statement

Credit Union Act – Section 365

Duty to Comply with Capital and Liquidity Requirements

Credit Union Act – Section 121

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Representative Actions

Credit Union Act – Section 320

Action for Damages for Misrepresentation in Offering Statement

Credit Union Act – Section 368

Order to Comply

Credit Union Act – Section 324

What section sets out the defences available to the directors and officers for these alleged breaches?

Defence – Breach of Duty of Care and Good Faith

Credit Union Act – Section 112(2)

Defence – Breach of Duty to Disclose in Offering Statement

Credit Union Act – Section 368

Insurance Companies

What agency, department or authority supervises insurance companies?

Financial and Consumer Affairs Authority of Saskatchewan
https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/insurance-companies-special-brokers-and-unlicensed-insurers

What statutes govern the creation or licencing of insurance companies in the jurisdiction?

The Insurance Act, SS 2015, C I-9.11
https://fcaa.gov.sk.ca/public/CKeditorUpload/Insurance/I9-11_(6).pdf

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty Not to Engage in Unfair or Deceptive Act

Insurance Act – Section 7-12

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Gathering Evidence

Insurance Act – Part IX Division 1

Offences

Insurance Act – Part IX Division 4

Order for Compliance

Insurance Act – Part IX Division 4

Suspension of Licence

Insurance Act – Part II Division 1 Subdivision 3

Administrative Penalties

Insurance Act – Part IX Division 4

What section sets out the defences available to the directors and officers for these alleged breaches?

Protected Disclosure

Insurance Act – Section 3-115

Limitation Period

Insurance Act – Section 8-5

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Financial and Consumer Affairs Authority of Saskatchewan
https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/pension-plans

What statute governs the creation of employment-based pension plans in the jurisdiction?

Pension Benefits Act, 1992, P-6.001
https://publications.saskatchewan.ca/#/products/801

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Duty of Care

Pension Benefits Act – Section 11

Duties of Investment

Pension Benefits Act – Section 44

Duty to Notify of Proposed Amendments

Pension Benefits Act – Section 17

Duty to Disclose

Pension Benefits Act – Section 13

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Offences and Penalties

Pension Benefits Act – Section 70

What section sets out the defences available to those individuals who allegedly breached those duties?

Limitation Periods

Pension Benefits Act – Section 71

Manitoba

Corporate Law

What department of the government has oversight of the corporation statute?

Manitoba Companies Office
https://companiesoffice.gov.mb.ca/statutes.html

What statute governs the incorporation of business corporations in the jurisdiction?

The Corporations Act, CCSM c C225
https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=c225

What sections impose duties on the corporation's directors and officers?

The Corporations Act – Part IX

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

The Corporations Act – Part XIX

What sections set out the defences officers and directors may assert against alleged violations of those duties?

The Corporations Act – Part IX

Securities Law

What commission or department is responsible for securities law?

Manitoba Securities Commission
https://mbsecurities.ca/

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

The Securities Act, CCSM c S50
https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=S50

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://docs.mbsecurities.ca/msc/ongoing-requirements/en/item/102042/index.do
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://docs.mbsecurities.ca/msc/ongoing-requirements/en/item/110357/index.do

Prospectus

Securities Act – Part VII

Management's Discussion & Analysis

National Instrument 51-102 – Part 5

Annual Information Form

National Instrument 51-102 – Part 6

Financial Statements

National Instrument 51-102 – Part 4

Material Changes

National Instrument 51-102 – Part 7

Making Filings Available

Securities Act – Section 120

Misleading Disclosure

Securities Act – Section 112.3

Forward-Looking Information

National Instrument 51-102 – Part 4A

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Securities Act – Part XIII

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Securities Act – Part XIII

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act – Part XIV

After Distribution – Action for Damages for Misrepresentation

Securities Act – Part XVIII

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Misrepresentation in Prospectus

Securities Act – Part XIV

Defence – Misrepresentation After Distribution

Securities Act – Part XVIII

Safe Harbour for Forward-Looking Information

Securities Act – Section 183

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act – Section 142(2)

Limitation Periods

Securities Act – Section 137

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://docs.mbsecurities.ca/msc/ongoing-requirements/en/item/514506/index.do

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://docs.mbsecurities.ca/msc/ongoing-requirements/en/item/419170/index.do

Credit Unions and Caisses Populaires

What agency, department or authority supervises credit unions and caisses populaires?

Financial Institutions Regulation Branch

https://mbfinancialinstitutions.ca/credit/index.html#:~:text=Province%20of%20Manitoba%20%7C%20firb%20%2D&text=FIRB%20administers%20The%20Credit%20Unions,the%20public%20interest%20is%20protected.

What statutes govern the creation or licencing of credit unions and caisses populaires in the jurisdiction?

The Credit Unions and Caisses Populaires Act, CCSM c C301

https://web2.gov.mb.ca/laws/statutes/archive/c301(2022-03-15)ei.php

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

The Credit Unions and Caisses Populaires Act – Section 76

Duty of Care and Good Faith

The Credit Unions and Caisses Populaires Act – Section 94(1)

Duty to Comply With Law

The Credit Unions and Caisses Populaires Act – Section 94(2)

Duty to Disclose in Offering Statement

The Credit Unions and Caisses Populaires Act – Section 51.2

Duty to Comply with Capital and Liquidity Requirements

The Credit Unions and Caisses Populaires Act – Part V

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Derivative Actions

The Credit Unions and Caisses Populaires Act – Section 192

Order to Comply

The Credit Unions and Caisses Populaires Act – Section 207

What section sets out the defences available to the directors and officers for these alleged breaches?

Defence – Breach of Duty of Care and Good Faith

The Credit Unions and Caisses Populaires Act – Section 95(4)

Limitation Period

The Credit Unions and Caisses Populaires Act – Section 88(5)

Insurance Companies

What agency, department or authority supervises insurance companies?

Financial Institutions Regulation Branch
https://mbfinancialinstitutions.ca/insurance/insurance-companies.html

What statutes govern the creation or licencing of insurance companies in the jurisdiction?

The Insurance Act, RSM 1987, c I40
https://web2.gov.mb.ca/laws/statutes/reccsm/i040e.php

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty Not to Use Unfair Policy

Insurance Act – Section 91(2)

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Insurance Act – Sections 110-113

What section sets out the defences available to the directors and officers for these alleged breaches?

Limitation Period

Insurance Act – Section 184

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Office of the Superintendent – Pension Commission
https://www.gov.mb.ca/finance/pension/about/pencom/index.html

What statute governs the creation of employment-based pension plans in the jurisdiction?

The Pension Benefits Act, CCSM c P32
https://web2.gov.mb.ca/laws/statutes/ccsm/p032.php?lang=en

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Duty of Care

The Pension Benefits Act – Section 28.1(2)

Duty to Make Records Available

The Pension Benefits Act – Section 30

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Administrative Penalties

The Pension Benefits Act – Section 37.1

Offences Order for Compliance

The Pension Benefits Act – Section 38

Order for Compliance

The Pension Benefits Act – Section 8(3)

What section sets out the defences available to those individuals who allegedly breached those duties?

Limitation Periods

The Pension Benefits Act – Section 38(4)

Nouveau-Brunswick

Droit des sociétés

Au sein du gouvernement, quel est le ministère responsable du droit des sociétés?

Nouveau-Brunswick
https://www2.snb.ca/content/snb/fr.html

Quelle est la loi régissant la constitution des sociétés commerciales dans la juridiction?

Loi sur les sociétés par actions, c 2, s 1
https://laws.gnb.ca/fr/document/lc/B-9.1

Quels sont les articles imposant des obligations aux administrateurs et aux dirigeants d'une société?

Loi sur les sociétés par actions – Partie VIII

Quels sont les articles permettant aux parties prenantes d'une société (actionnaires, créanciers, administrateurs, etc.) de demander réparation en cas de manquement à ces obligations?

Loi sur les sociétés par actions – Partie XV

Quels sont les articles définissant les moyens de défense que les dirigeants et les administrateurs peuvent invoquer en cas de manquement présumé à ces obligations?

Loi sur les sociétés par actions – Section 80

Droit des valeurs mobilières

Quelle commission ou quel ministère est responsable du droit des valeurs mobilières?

Commission des services financiers et des services aux consommateurs
https://fcnb.ca/fr/les-valeurs-mobilieres

Quelle loi régit l'émission de titres par une société commerciale auprès du public dans cette juridiction?

Loi sur les sociétés par actions, S 5.5
https://laws.gnb.ca/fr/tdm/lc/S-5.5

Quels sont les articles de la loi et des règlements connexes qui imposent des obligations aux dirigeants et aux administrateurs d'une société en ce qui a trait à l'information devant être publiée publiquement?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- Règlement 51-102 *Obligations d'information continue* https://fcnb.ca/fr/les-valeurs-mobilieres/reglementation-et-politique-des-valeurs-mobilieres/normes-reglementaires/51-102-obligations-dinformation-continue
- Règlement 51-101 *Information concernant les activités pétrolières et gazières* https://fcnb.ca/fr/les-valeurs-mobilieres/reglementation-et-politique-des-valeurs-mobilieres/normes-reglementaires/51-101-information-concernant-les-activites-petrolieres-et-gazieres

Prospectus

Loi sur les sociétés par actions – Partie 6

Rapport de gestion

Règlement 51-102 – Partie 5

Annexe de notice annuelle

Règlement 51-102 – Partie 6

États financiers

Règlement 51-102 – Partie 4

Changements importants

Securities Act – Section 89(1)
Règlement 51-102 – Partie 7

Mise à disposition des déclarations financières

Securities Act – Section 198

Divulgation trompeuse

Loi sur les valeurs mobilières– Section 64

Information prospective

Règlement 51-102 – Partie 4A

Quels sont les articles définissant les conséquences pour les dirigeants et les administrateurs en cas de non-respect des normes de divulgation prévues par la loi?

Loi sur les valeurs mobilières – Partie 14

Quels sont les articles définissant les pouvoirs de l'autorité de réglementation pour prendre des mesures à l'encontre des administrateurs et des dirigeants pour un tel manquement?

Loi sur les valeurs mobilières – Partie 14

Existe-t-il des dispositions permettant aux acquéreurs de titres d'une société de se retourner contre les administrateurs et les dirigeants en cas de non-divulgation ou de fausse déclaration?

Durant la diffusion – Action en dommages-intérêts pour fausse déclaration dans un prospectus

Loi sur les valeurs mobilières – Partie 11

Après la diffusion – Action en dommages-intérêts pour fausse déclaration dans un prospectus

Loi sur les valeurs mobilières – Partie 11.1

Quels sont les articles définissant les moyens de défense dont disposent les administrateurs et les dirigeants en cas de manquement présumé à l'obligation d'information?

Défense – Fausse déclaration dans les prospectus

Loi sur les valeurs mobilières – Partie 11

Défense – Fausse déclaration après diffusion

Loi sur les valeurs mobilières – Partie 11.1

Sphère de sécurité pour les informations prospectives

Loi sur les valeurs mobilières – Section 154.1

Immunité pour actes/omissions commis en conformité à la loi

Loi sur les valeurs mobilières – Section 195.6

Délais de prescription

Loi sur les valeurs mobilières – Section 192

Quels sont les règlements ou les avis du personnel des ACVM couvrant les obligations d'information en matière climatique?

Projet de Règlement 51-107

https://fcnb.ca/fr/les-valeurs-mobilieres/reglementation-et-politique-des-valeurs-mobilieres/normes-reglementaires/51-107-information-liee-aux-questions-climatiques

Avis 51-358 du personnel des ACVM - Information sur les risques liés au changement climatique

https://fcnb.ca/fr/les-valeurs-mobilieres/reglementation-et-politique-des-valeurs-mobilieres/normes-reglementaires/51-358-avis-51-358-du-personnel-des-acvm-information-sur-les-risques-lies-au

Compagnies d'assurance

Quelle agence, quel ministère ou quelle autorité supervise les compagnies d'assurance?

Commission des services financiers et des services aux consommateurs

https://fcnb.ca/en/insurance

Quelles sont les lois régissant la création ou l'agrément des compagnies d'assurance dans la juridiction?

Loi sur les assurances, LRN-B 1973, c I-12

https://laws.gnb.ca/en/pdf/cs/I-12.pdf

Quel article impose aux administrateurs et aux dirigeants de l'entreprise des obligations à l'égard de ses parties prenantes (actionnaires, créanciers, clients)?

Obligation de ne pas commettre d'actes déloyaux ou trompeurs

Loi sur les assurances – Section 369.2

Quel article prévoit des recours en cas de manquement présumé à ces obligations et qui peut exercer ces recours (autorités réglementaires, actionnaires, clients, créanciers)?

Collecte de preuves

Loi sur les assurances – Partie XVII

Exécution

Loi sur les assurances – Partie XVIII

Quel article énonce les moyens de défense dont disposent les administrateurs et les dirigeants pour ces manquements présumés?

Délais de prescription

Loi sur les assurances – Section 396

Caisses de retraite

Quelle agence, quel département ou quelle autorité supervise les régimes de retraite basés sur l'emploi enregistrés dans la juridiction?

Commission des services financiers et des services aux consommateurs
https://fcnb.ca/fr/finances-personnelles/pensions-et-retraite

Quelle loi régit la création de régimes de retraite basés sur l'emploi dans la juridiction ?

Loi sur les prestations de pension, P-5.1
https://laws.gnb.ca/fr/document/lc/P-5.1

Quels sont les articles de loi et de règlements qui imposent des obligations aux personnes chargées de l'administration du régime et de son fonds en matière d'investissement des actifs?

Devoir de diligence

Loi sur les prestations de pension – Section 17

Obligation de ne pas faire de déclarations fausses ou trompeuses

Loi sur les prestations de pension – Section 78.62

Obligation d'établir un énoncé des politiques et procédures d'investissement

Loi sur les prestations de pension – Section 100.4

Obligation de fournir un état des prestations

Loi sur les prestations de pension – Section 25

Obligation de tenir les registres à disposition

Loi sur les prestations de pension – Section 27

Quel article prévoit des recours en cas de manquement présumé à ces obligations et qui peut exercer ces recours?

Enquêtes

Loi sur les prestations de pension – Sections 78.3-78.52

Exécution

Loi sur les prestations de pension – Sections 78.6-80

Quel article énonce les moyens de défense à la disposition des personnes qui auraient manqué à ces obligations?

Défense – Déclaration trompeuse

Loi sur les prestations de pension – Section 78.6(3)

Nova Scotia

Corporate Law

What department of the government has oversight of the corporation statute?

Department of Service Nova Scotia
https://beta.novascotia.ca/government/service-nova-scotia/programs-and-services

What statute governs the incorporation of business corporations in the jurisdiction?

Companies Act, RSNS 1989, c 81
https://nslegislature.ca/sites/default/files/legc/statutes/companies.pdf

What sections impose duties on the corporation's directors and officers?

Companies Act – Sections 93-100

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

Companies Act – Section 135A

What sections set out the defences officers and directors may assert against alleged violations of those duties?

Companies Act – Section 153

Securities Law

What commission or department is responsible for securities law?

Nova Scotia Securities Commission
https://nssc.novascotia.ca/

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

Securities Act, RSNS 1989, c 418
https://nslegislature.ca/sites/default/files/legc/statutes/securities.pdf

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://nssc.novascotia.ca/securities-law-policy/rules/51-102-continuous-disclosure-obligations-rule-51-102
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://nssc.novascotia.ca/securities-law-policy/rules/51-101-standards-disclosure-oil-and-gas-activities-rule-51-101

Prospectus

Securities Act – Section 58

Management's Discussion & Analysis

National Instrument 51-102 – Part 5

Annual Information Form

National Instrument 51-102 – Part 6

Financial Statements

National Instrument 51-102 – Part 4

Material Changes

National Instrument 51-102 – Part 7

Making Filings Available

Securities Act – Section 148

Misleading Disclosure

Securities Act – Section 30Q

Forward-Looking Information

National Instrument 51-102 – Part 4A

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Securities Act – Sections 129-135B

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Securities Act – Sections 129-135B

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act – Sections 137-138

After Distribution – Action for Damages for Misrepresentation

Securities Act – Section 146C

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Misrepresentation in Prospectus

Securities Act – Sections 137-138

Defence – Misrepresentation After Distribution

Securities Act – Section 146C

Safe Harbour for Forward-Looking Information

Securities Act – Section 139A

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act – Section 149

Limitation Periods

Securities Act – Section 136

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://nssc.novascotia.ca/securities-law-policy/rules/51-107-csa-notice-and-request-comment-proposed-ni-51-107-disclosure-climate-related-matters

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://nssc.novascotia.ca/securities-law-policy/rules/51-358-reporting-climate-change-related-risks-csa-notice-51-358

Credit Unions and Caisses Populaires

What agency, department or authority supervises credit unions and caisses populaires?

Nova Scotia Credit Union Deposit Insurance Corporation
https://www.nscudic.org/about-cudic/

What statutes govern the creation or licencing of credit unions and caisses populaires in the jurisdiction?

Credit Union Act, SNS 1994, c 4
https://nslegislature.ca/sites/default/files/legc/statutes/credit%20union.pdf

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

Credit Union Act – Section 80

Duty of Care and Good Faith

Credit Union Act – Section 100

Duty to Comply with Capital and Liquidity Requirements

Credit Union Act – Part V

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Derivative Actions

Credit Union Act – Section 216

Offences

Credit Union Act – Section 234

Order for Compliance

Credit Union Act – Section 235

What section sets out the defences available to the directors and officers for these alleged breaches?

Defence – Breach of Duty of Care and Good Faith

Credit Union Act – Section 101(4)

Limitation Period

Credit Union Act – Section 235(2)

Insurance Companies

What agency, department or authority supervises insurance companies?

Office of the Superintendent of Insurance
https://novascotia.ca/finance/en/home/insurance/superintendantofinsurance.aspx.html

What statutes govern the creation or licencing of insurance companies in the jurisdiction?

Insurance Act, RSNS 1989, c 231
https://nslegislature.ca/sites/default/files/legc/statutes/insurance.pdf

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty Not to Use Unfair Policy

Insurance Act – Section 15(2)

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Gathering Evidence

Insurance Act – Section 49

Action Against Insurer

Insurance Act – Section 28

Suspension of Licence

Insurance Act – Section 45

Administrative Penalties

Insurance Act – Section 317

What section sets out the defences available to the directors and officers for these alleged breaches?

Limitation Period

Insurance Act – Section 24

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Office of the Superintendent of Pensions
https://novascotia.ca/finance/en/home/pensions/regulation.aspx.html

What statute governs the creation of employment-based pension plans in the jurisdiction?

Pension Benefits Act, RSNS 1989, c 340
https://nslegislature.ca/sites/default/files/legc/statutes/pension%20benefits.pdf

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Duty of Care

Pension Benefits Act – Section 33

Duty of Investment

Pension Benefits Act – Section 85

Duty to Notify of Amendments

Pension Benefits Act – Section 39

Provide Statement of Benefits

Pension Benefits Act – Section 38

Duty to Make Records Available

Pension Benefits Act – Section 42

Duty to Ensure Contributions Paid

Pension Benefits Act – Section 78

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Investigation

Pension Benefits Act – Section 124

Administrative Penalties

Pension Benefits Act – Section 129

Offences

Pension Benefits Act – Section 128

Order Restraining Contravention

Pension Benefits Act – Section 133

What section sets out the defences available to those individuals who allegedly breached those duties?

Limitation Periods

Pension Benefits Act – Section 135

Newfoundland & Labrador

Corporate Law

What department of the government has oversight of the corporation statute?

Digital Government and Service Newfoundland
https://www.gov.nl.ca/dgsnl/businesses/

What statute governs the incorporation of business corporations in the jurisdiction?

Corporations Act, RSNL1990, c C-36
https://www.assembly.nl.ca/legislation/sr/statutes/c36.htm

What sections impose duties on the corporation's directors and officers?

Corporations Act – Part IX

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

Corporations Act – Part XVIII

What sections set out the defences officers and directors may assert against alleged violations of those duties?

Indemnification

Corporations Act – Section 207

Limitation Period

Corporations Act – Section 518

Securities Law

What commission or department is responsible for securities law?

Digital Government and Service Newfoundland
https://www.gov.nl.ca/dgsnl/securities/

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

Securities Act, RSNL 1990, C S-13
https://www.assembly.nl.ca/legislation/sr/statutes/s13.htm

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://www.gov.nl.ca/dgsnl/files/securities-rulemaking-51-102.pdf
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://www.gov.nl.ca/dgsnl/files/securities-rulemaking-51-101.pdf

Prospectus

Securities Act – Part XIV

Management's Discussion & Analysis

National Instrument 51-102 – Part 5

Annual Information Form

National Instrument 51-102 – Part 6

Financial Statements

National Instrument 51-102 – Part 4

Material Changes

Securities Act – Section 76
National Instrument 51-102 – Part 7

Making Filings Available

Securities Act – Section 140

Forward-Looking Information

National Instrument 51-102 – Part 4A

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Securities Act – Part XXI

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Securities Act – Part XXI

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act – Part XIX

After Distribution – Action for Damages for Misrepresentation

Securities Act – Part XVIII.1

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Misrepresentation in Prospectus

Securities Act – Part XXII

Defence – Misrepresentation After Distribution

Securities Act – Part XXII.1

Safe Harbour for Forward-Looking Information

Securities Act – Section 132

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act – Section 141(2)

Limitation Periods

Securities Act – Section 129

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-107

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://www.securities-administrators.ca/news/canadian-securities-regulators-issue-guidance-on-climate-change-related-disclosure/

Credit Unions and Caisses Populaires

What agency, department or authority supervises credit unions and caisses populaires?

Digital Government and Service Newfoundland – Regulatory Affairs Branch

https://www.gov.nl.ca/dgsnl/department/branches/cca/

What statutes govern the creation or licencing of credit unions and caisses populaires in the jurisdiction?

Credit Union Act, 2009, c C-37.2
https://assembly.nl.ca/legislation/sr/statutes/c37-2.htm

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

Credit Union Act – Section 69

Duty of Care and Good Faith

Credit Union Act – Section 86(1)

Duty to Comply With Law

Credit Union Act – Section 86(2)

Duty to Comply with Capital and Liquidity Requirements

Credit Union Act – Part IV

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Derivative Actions

Credit Union Act – Section 157

Remedies, Offences and Penalties

Credit Union Act – Part XI

What section sets out the defences available to the directors and officers for these alleged breaches?

Indemnification

Credit Union Act – Section 88

Insurance Companies

What agency, department or authority supervises insurance companies?

Digital Government and Service Newfoundland – Regulatory Affairs Branch
https://www.gov.nl.ca/dgsnl/department/branches/cca/

What statutes govern the creation or licencing of insurance companies in the jurisdiction?

Insurance Companies Act, RSNL 1990, c I-10

https://www.canlii.org/en/nl/laws/stat/rsnl-1990-c-i-10/latest/rsnl-1990-c-i-10.html

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Directors Generally

Insurance Companies Act – Section 99

Misleading Statements

Insurance Companies Act – Section 88

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Gathering Evidence

Insurance Companies Act – Section 75-78

Offences

Insurance Companies Act – Section 108

Suspension of Licence

Insurance Companies Act – Section 128

What section sets out the defences available to the directors and officers for these alleged breaches?

Limitation Period

Insurance Companies Act – Section 108.2

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Digital Government and Service Newfoundland – Regulatory Affairs Branch
https://www.gov.nl.ca/dgsnl/department/branches/cca/

What statute governs the creation of employment-based pension plans in the jurisdiction?

Pension Benefits Act, 1997, c P-4.01
https://www.assembly.nl.ca/legislation/sr/statutes/p04-01.htm

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Duties of Administrator

Pension Benefits Act – Section 14

Duty to Make Records Available

Pension Benefits Act – Section 25

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

Enforcement

Pension Benefits Act – Part X

What section sets out the defences available to those individuals who allegedly breached those duties?

Limitation Period

Pension Benefits Act – Section 77

Prince Edward Island

Corporate Law

What department of the government has oversight of the corporation statute?

Department of Justice and Public Safety
https://www.princeedwardisland.ca/en/topic/justice-and-public-safety

What statute governs the incorporation of business corporations in the jurisdiction?

Business Corporations Act, RSPEI 1988, c B-6.01
https://www.princeedwardisland.ca/sites/default/files/legislation/b-06-01-business_corporations_act.pdf

What sections impose duties on the corporation's directors and officers?

Business Corporations Act – Part X

What sections permit the corporation's stakeholders (shareholders, creditors, directors, etc.) to seek remedies for the violations of those duties?

Business Corporations Act – Part XVII

What sections set out the defences officers and directors may assert against alleged violations of those duties?

Business Corporations Act – Part X

Securities Law

What commission or department is responsible for securities law?

Department of Justice and Public Safety
https://www.princeedwardisland.ca/en/topic/securities

What statute governs the issuance of securities by a business corporation to the public in this jurisdiction?

Securities Act, RSPEI 1988, c S-3.1
https://www.princeedwardisland.ca/sites/default/files/legislation/s-03-1-securities_act.pdf

What sections of the statute and related instruments impose duties on the corporation's officers and directors concerning the information they must disclose publicly?

Provisions imposing disclosure requirements are found in the *Securities Act,* as well as the following National Instruments established under the *Securities Act,* as well as some sector specific instruments:

- National Instrument 51-102 *Continuous Disclosure Obligations*
  https://www.princeedwardisland.ca/en/information/justice-and-public-safety/51-802-continuous-disclosure-obligations
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*
  https://www.princeedwardisland.ca/en/information/justice-and-public-safety/51-801-standards-disclosure-oil-and-gas-activities

Prospectus

Securities Act – Part 9

Management's Discussion & Analysis

National Instrument 51-102 – Part 5

Annual Information Form

National Instrument 51-102 – Part 6

Financial Statements

National Instrument 51-102 – Part 4

Material Changes

Securities Act – Part 10
National Instrument 51-102 – Part 7

Making Filings Available

Securities Act – Section 26

Misleading Disclosure

Securities Act – Section 146

Forward-Looking Information

National Instrument 51-102 – Part 4A

What sections set out the consequences for the officers and directors for a failure to meet the disclosure standards in the statute?

Securities Act – Part 17

What sections set out the powers of the regulator to take action against the directors and officers for such a failure?

Securities Act – Part 17

Are there any sections that allow purchasers of the corporation's securities to seek remedies against the directors and officers for non-disclosure or misrepresentation?

During Distribution – Action for Damages for Misrepresentation in Prospectus

Securities Act – Part 13

After Distribution – Action for Damages for Misrepresentation

Securities Act – Part 14

What sections set out the defences available to directors and officers against alleged failures of disclosure?

Defence – Misrepresentation in Prospectus

Securities Act – Part 13

Defence – Misrepresentation After Distribution

Securities Act – Part 14

Safe Harbour for Forward-Looking Information

Securities Act – Section 111(8)-(9), 112(7)-(9), 125(9)-(12)

Immunity for Acts/Omissions Done in Compliance with Law

Securities Act – Section 153(2)

Limitation Periods

Securities Act – Section 141

What National Instruments or CSA Staff Notices cover climate-related disclosure obligations?

Proposed National Instrument 51-107

https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-107

CSA Staff Notice 51-358 Reporting of Climate Change-related Risks

https://www.securities-administrators.ca/news/canadian-securities-regulators-issue-guidance-on-climate-change-related-disclosure/

Credit Unions and Caisses Populaires

What agency, department or authority supervises credit unions and caisses populaires?

Department of Justice and Public Safety

https://www.princeedwardisland.ca/en/legislation/credit-unions-act

What statutes govern the creation or licencing of credit unions and caisses populaires in the jurisdiction?

Credit Unions Act, RSPEI 1988, c C-29.1
https://www.princeedwardisland.ca/sites/default/files/legislation/C-29-1-Credit%20Unions%20Act.pdf

What section imposes duties on the corporation's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty to Manage

Credit Unions Act – Section 24

Duty of Care and Good Faith

Credit Unions Act – Section 40

Duty of Confidentiality

Credit Unions Act – Section 40

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Liability of Directors

Credit Unions Act – Section 41

What section sets out the defences available to the directors and officers for these alleged breaches?

Limitation Period

Credit Unions Act – Section 41

Insurance Companies

What agency, department or authority supervises insurance companies?

Office of the Superintendent of Insurance
https://www.princeedwardisland.ca/en/information/insurance-regulation

What statutes govern the creation or licencing of insurance companies in the jurisdiction?

Insurance Act, RSPEI 1988, c I-4
https://www.princeedwardisland.ca/sites/default/files/legislation/i-04-insurance_act.pdf

What section imposes duties on the company's directors and officers to its stakeholders (shareholders, creditors, customers)?

Duty Not to Use Unfair Policy

Insurance Act – Section 106

Misleading Statements

Insurance Act – Section 108

What section provides remedies for alleged breaches of those duties and who may seek such remedies (regulators, shareholders, customers, creditors)?

Gathering Evidence

Insurance Act – Section 13-16

Penalties

Insurance Act – Section 82

Suspension of Licence

Insurance Act – Section 33

What section sets out the defences available to the directors and officers for these alleged breaches?

Limitation Period

Insurance Act – Section 100

Pension Funds

What agency, department or authority supervises employment-based pension plans registered in the jurisdiction?

Prince Edward Island Public Sector Pension Plan
https://www.peipspp.ca/

What statute governs the creation of employment-based pension plans in the jurisdiction?

Public Sector Pension Plan Act
https://www.princeedwardisland.ca/sites/default/files/legislation/p-32-11-public_sector_pension_plan_act.pdf

What sections of the statute and regulations impose duties on those who administer the plan and its fund concerning the investment of the fund's assets?

Duty of Care

Public Sector Pension Plan Act – Section 4.4

Duty to Invest in Accordance with Policy

Public Sector Pension Plan Act – Section 5(4)

What section provides remedies for alleged breaches of those duties and who may seek such remedies?

N/A

What section sets out the defences available to those individuals who allegedly breached those duties?

Immunity

Public Sector Pension Plan Act – Section 27.1

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