



FOR IMMEDIATE RELEASE

Climate change is part of pension trustees' legal responsibilities, a new Canadian analysis reveals

26 May 2021, London – Canadian pension trustees are the latest to receive a warning that they must consider climate change as part of their legal responsibilities, joining their peers in the UK, Australia and South Africa that have been put on notice in recent years by influential legal opinions.

The Canada Climate Law Initiative has today released an opinion from one of Canada's most respected pension lawyers, Randy Bauslaugh of McCarthy Tétrault LLP. Randy concludes that pension fund trustees have obligations to consider climate change as part of their fiduciary duty.

Mr. Bauslaugh's opinion is based on the relevant economic and scientific evidence concerning climate change, and applies basic principles, statutory requirements, and recent case law in arriving at his conclusion. The risks to younger pension contributors was noted, given trustees' obligations of inter-generational fairness. In addition, the opinion gives practical advice on how trustees can meet their legal obligations.

Mr. Bauslaugh emphasized that "the legal opinions expressed in this paper do not arise from any ethical, moral, environmental, cultural or social desire to address climate change, or to save the planet. They arise out of a basic application of fiduciary obligation imposed by minimum pension standards legislation, the common law and civil law, to widely accepted evidence of the economic consequences of climate change.

He added: "Importantly, for purposes of this paper, that evidence includes evidence that not only is climate change real and a serious threat to the planet and to people, but that it presents material risks to investment performance and the stewardship role fiduciaries play in the investment of pension plan assets."

Catherine McCall, Executive Director of the Canadian Coalition for Good Governance whose members have approximately C\$5 trillion in assets under management, observes that "pension investment fiduciaries can't ignore the financial implications without legal risk."

UK pension trustees were the first to be put on notice when, in 2016, pensions expert Keith Bryant QC opined that pension fund trustees who fail to consider climate risk could be exposing themselves to legal challenge. Australian pension trustees were warned about their obligations with respect to climate change in a legal opinion by Noel Hutley SC and James Mack, first published in 2017 and updated in 2021. South African pension boards received their warning in 2019 when non-profits Just Share and ClientEarth published a legal opinion by law firm Fasken on the duty of the boards of South African pension funds to take climate change into account when making investment decisions.

Ellie Mulholland, Director of the Commonwealth Climate and Law Initiative said, "Fiduciary duty claims rarely make it to court judgment, so legal opinions are incredibly influential in shaping mainstream understanding of how these legal requirements apply to new circumstances, such as the financial risks arising from climate change and the net zero transition. The UK, Australian, and South African legal opinions have been cited by financial regulators, corporate law firms and industry bodies, and we expect the Bauslaugh opinion in Canada to be similarly influential."

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About Randy Bauslaugh

Randy Bauslaugh is co-Chair of McCarthy Tétrault's national Pensions, Benefits & Executive Compensation practice, and co-Chair of its 45-lawyer national Pension Funds Group. Randy provides legal advice to plan sponsors, administrators, service providers and governments on a wide range of pension and benefit matters. He has been involved in many of the leading pension and benefit cases over the past 35 years.

Randy strives to provide practical solutions. As a trustee of one of Canada's largest ELHTs and as a corporate director, he understands the need for diligent, practical and comprehensible legal advice when advising or representing decision makers and in-house counsel. He is an active supporter of many industry associations: for example, he is a member of the Pension Policy Council of the C.D. Howe Institute, the editorial advisory board of Benefits and Pensions Monitor and a former Chairman of the International Pension and Employee Benefits Lawyers Association.

Randy obtained a BA from the University of Waterloo in 1977 and his LLB from Osgoode Hall Law School in 1981. He was called to the Ontario Bar in 1983.

About the Commonwealth Climate and Law Initiative

The Commonwealth Climate and Law Initiative is a legal research and stakeholder engagement initiative founded by Oxford University Smith School of Enterprise and the Environment, ClientEarth and Accounting for Sustainability (A4S). The Commonwealth Climate and Law Initiative examines the legal basis for directors and trustees to manage and report on climate change-related risk and climate mitigation and our research is at the forefront of the intersection of climate and biodiversity risks under existing companies and securities laws. We also provide practical tools on how to integrate the risks and opportunities of climate change into corporate governance, to minimise the risk of personal liability and maximise efforts of the private sector in the transition to a sustainable economy. Founded to focus on four Commonwealth countries: Australia, Canada, South Africa, and the United Kingdom, the Commonwealth Climate and Law Initiative has expanded its remit to the United States, Singapore, India, Hong Kong, Japan and Malaysia. For more information, visit: <https://ccli.ouce.ox.ac.uk/>

About the Canada Climate Law Initiative

The Canada Climate Law Initiative is the Canadian partner of the Commonwealth Climate Law Initiative. The Canada Climate Law Initiative is an inter-disciplinary research initiative that advances the understanding of climate governance across Canada through research, dialogue and knowledge sharing. CCLI conducts rigorous legal analysis and consult with a national network of 66 Canadian Climate Governance Experts to bring up-to-date governance knowledge and tools to corporate and pension boards across Canada. CCLI is led by three principal investigators, Dr. Janis Sarra and Dr. Carol Liao from the Peter A. Allard School of Law, University of British Columbia, and Professor Cynthia Williams from the Osgoode Hall Law School, York University. For further information: <https://ccli.ubc.ca/>

CCLI acknowledges that the UBC Point Grey campus is situated on the traditional, ancestral and unceded territory of the xʷməθkʷəy̓əm (Musqueam).



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