Nature-related risks and the duties of directors of Canadian corporations

Legal Opinion

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EXECUTIVE SUMMARY

Resilient LLP prepared this legal opinion to provide guidance on the legal obligations of directors of Canadian for-profit corporations in relation to nature-related risks ("**NRR**", or "**Nature-Related Risks**").[1] Nature-related risks are defined as potential threats (effects of uncertainty) posed to an organization that arise from its and wider society's **dependencies and impacts** on nature.[2]

The opinion addresses the following legal questions related to Nature-Related Risks:

(a) Are Nature-Related Risks foreseeable and may they constitute material risks of harm to the interests of Canadian corporations?

(b) Are directors of Canadian corporations permitted and/or required to consider Nature-Related Risks in order to discharge their fiduciary and related duties under s. 122 of the *Canada Business Corporations Act* ("**CBCA**"),[3] analogous Canadian provincial and territorial statutes, and Canadian common law jurisprudence?

(c) What, if any, obligations do Canadian corporations (and the directors that oversee them) have related to: (i) systems to assess the disclosure of nature-related dependencies and impacts; and (ii) the disclosure of Nature-Related Risks?

In undertaking the above analysis, we have also considered: (i) potential impacts of a breach of director duties associated with Nature-Related Risks; and (ii) the potential impact of the recommendations (the "**TNFD Recommendations**") of the Taskforce on Nature-related Financial Disclosures[4] ("**TNFD**") on the assessment of directors' duties and disclosure obligations related to Nature-Related Risks.

The current context. It is necessary to understand the current context of nature-related risks to determine whether a director in Canada has met their potential duties associated with nature-related risk. Specifically, the current context is relevant to the determination of the legal and jurisprudential requirements that include an assessment of the "prudence" and "reasonableness" of a director's actions, and the "similar circumstances", "the current time", and "context" in which a director may be acting. Section 3 of this opinion provides: (i) a detailed overview of the financial materiality of biodiversity loss and NRR globally and in Canada; and (ii) consolidated information on the legal, policy, and business responses to NRR. This includes the following extensive and readily available information on NRR that Canadian directors know or reasonably ought to know:

(a) the World Economic Forum ("**WEF**"), the Organization for Economic Cooperation and Development ("**OECD**"), the Financial Stability Board ("**FSB**"), the Network for Greening the Financial System ("**NGFS**"), the World Bank Group, EY, and PwC have published warnings of the severity and potential materiality of NRR for business, with over 50% of the world's gross domestic product

[1] Note: We rely on our particularization of the definition of NRR as set out in paragraph 12 of this opinion for the purposes of this opinion.
[2] Note: This definition of "nature-related risks" is provided by the recommendations of Taskforce on Nature-related Financial Disclosures.
[3] *Canada Business Corporations Act*, R.S.C., 1985, C-44.
[4] TNFD, *Recommendations of the Taskforce on Nature-related Financial Disclosures* (September 2023) ("**TNFD Recommendations**").

("**GDP**") estimated to be moderately or highly dependent on nature and exposed to nature loss by 2030, and each calls for prudent business action to address biodiversity loss (Section 3.1);

(b) there are international and Canadian treaty obligations (*Convention on Biological Diversity*[5] and its *Global Biodiversity Framework* ("**GBF**")[6]) requiring signatories, including Canada, to restore 30% of degraded ecosystems and conserve and manage 30% of global land, inland waters, coastal waters and oceans by 2030 (Section 3.3.1);

(c) the TNFD Recommendations provide an NRR policy and disclosure framework that has been endorsed and adopted by over 500 corporations (Sections 3.3.1 and 3.3.2);

(d) the G7 and G20 have committed to implement the GBF and facilitate economic and financial sector action on NRR (Section 3.3.2);

(e) Indigenous rights and title in Canada are intrinsically tied to nature, constitutionally protected, and current policy priorities of the new federal government (Section 3. 4);

(f) Canada's Arctic and northern regions are warming at a rate nearly four times faster than the rest of the country, posing significant nature-related impacts on the forestry, mining, oil and gas, and extractive sectors that are reliant on Arctic ecosystems (Section 3.2.2); and

(g) the expectations of Canadian investors related to NRR include the expectation that corporate boards anticipate, manage, and integrate NRR into business strategy in order to create and preserve corporate value over the long-term (Section 3.5).

Foreseeability. A plethora of global and Canadian reports highlight the known and significant impacts of NRR. This conclusion is supported by the GBF and TNFD Recommendations, Indigenous rights and Indigenous ecological knowledge ("**TEK**"), sector-specific impacts, Canada's 2030 Nature Strategy,[7] and Canadian policy. Canadian corporations may be subject to, or affected by: (i) nature-related physical risks (including extreme events such as pests and virus vectors, forest-fires, and floods); (ii) nature-related transition risks (including changing policy and regulatory requirements, new federal nature policy, Indigenous rights, and changing customer demands); and (iii) systemic risks (including tipping points). This information is detailed in Section 4 of this opinion. In light of the foregoing, it is our opinion that NRR, including both nature-related dependencies and nature-related impacts, are not far-fetched, but are real risks that are known, well-documented, and reasonably foreseeable at this time.

Director's fiduciary duty. Section 122(1)(a) of the CBCA, stipulates that every director of a Canadian corporation has the duty to "*act honestly and in good faith with a view to the best interests of the corporation*". Fiduciary duty is subjective, and the motivation of the director is the central focus of the duty. It is our opinion that:

- The s. 122(1)(a) fiduciary duty, as elaborated upon by s. 122(1.1)(b) and (c) and Canadian jurisprudence, both permits and may require companies and their corporate directors to, at a minimum, identify nature-related dependencies and impacts, and consider material NRR in the

[5] *Convention on Biological Diversity*, 1760 U.N.T.S. 69 (adopted 5 June 1992, entered into force 29 December 1993). ("**CBD**").
[6] CBD, *Kunming-Montreal Global Biodiversity Framework*, (19 December 2022), CBD/COP/DEC/15/4) ("**GBF**").
[7] ECCC, *Canada's 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada*, (2024).

context of the best interests of the company — particularly for directors in sectors that are known to be highly nature-dependent or have significant nature-related impacts.

- NRR may fall within the specific stakeholder and other interests that directors may be required to consider pursuant to s. 122(1.1) of the CBCA and related jurisprudence, given that nature and NRR are part of the environment, and NRR may materially impact corporate supply chains, customers, and the long-term interests of the corporation.

- The fiduciary duty does not require directors to elevate NRR above all other interests; however, it is likely to require them to, at a minimum identify the corporation's nature-related dependencies and impacts on nature and appropriately balance material NRR within the best interests of the corporation.

Duty of care. Section 122(1)(b) of the CBCA sets out the duty of care and stipulates that every director of a Canadian corporation has the duty to "*exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances*." The director's duty to prudently oversee the management and affairs of the corporation is implicit in the duty of care. While the determination of whether the director has discharged their duty of care related to NRR will be fact-specific for the director decisions and company in question, it is our general opinion that simply ignoring the class of wide reaching and potentially material NRR is not reasonable, prudent, or diligent in the current context and circumstances. A reasonably prudent director must know, or ought to know, that NRR are foreseeable and may constitute a potential material class of risk for Canadian corporations, particularly those that are highly nature dependent or have significant impacts on nature.

It is our opinion that the duty of care requires directors to, at minimum, take reasonable and prudent action to:

- be informed and have sufficient knowledge of the class of NRR that may apply to the corporation — for example by making specific inquiries, seeking director education, or external expert advice;

- have a governance and risk management process in place to identify the corporation's nature-related dependencies and impacts on nature and assess the materiality of identified NRR as they would any other significant strategic or operational risk, especially in nature-dependent sectors (mining, forestry, agriculture, energy, insurance, and retail);

- consider current and longer-term NRR that may take the form of physical, transition, legal, or systemic NRR, and ensure oversight systems capture emerging NRR; and

- balance and manage material nature-related dependencies and material impacts on nature in the context of the entities to which a duty of care may be owed, including, without limitation, impacted Indigenous rightsholders.

Potential claims for breach of directors' duties. Generally, a director's breach of fiduciary duty may give rise to both statutory and common law claims and potential remedies in law and equity. However, a breach of the duty of care is not an independent foundation for legal action. The duty of care is relevant to the assessment of the "*standard of behaviour that should reasonably be expected*"[8] of a director and is

[8] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69, at para 44.

therefore most likely to come into play where a board (or individual director) is sued in tort (including negligence) or under the CBCA oppression remedy. It is our opinion that, if directors are unduly passive toward NRR, do not engage in a reasoned process to identify and analyze NRR, and have no governance process to oversee the corporation's material nature-related dependencies and impacts on nature, they are likely to attract claims, both personally and against the corporation, under the CBCA or common law, and are very unlikely to benefit from the discretion afforded to them under the "*business judgment rule*."

Claims related to a breach of a director's fiduciary duty and/or the duty of care may take the form of direct or accessorial claims, including:

- derivative actions brought by a shareholder, the holder of a debt obligation, a creditor, or another person acting on behalf of the corporation pursuant to s. 239(1) of the CBCA;

- oppression actions alleging that the corporation's NRR decision was oppressive or unfairly prejudicial to, or unfairly disregarded the interests of, any security holder, creditor, director or officer pursuant to s. 241(1) of the CBCA;

- in the event that the breach of the duty of care leads to a breach of disclosure obligations, disclosure-related complaints and claims as set out in Section 7;

- tort claims in negligence, or potentially nuisance; and

- injunctions against project proponents for failures to perform any delegated duty to consult and accommodate Indigenous rightsholders.

Materiality. The analysis set out in Section 6 of this opinion also supports the conclusion that each aspect of the class of nature-related risks (both the corporation's nature-related dependencies and the corporation's impact on nature) may pose material risks for the corporation. A number of global and Canadian institutions also report that NRR pose significant and potentially material threats to business and financial systems and have issued calls for action. Canadian securities law does not currently include the concept of impact materiality and instead focuses on information that is material to investors (financial materiality). It is our view, however, that both financial and impact materiality are relevant to investors and other stakeholders. They are intrinsically inter-related, and the distinction may be a difference in timing, not necessarily degree, as the impacts of the corporation on nature may be financially material if, now or in the future, they're likely to affect a company's financial performance, business reputation, financial position, cash flows, financing, or cost of capital, over the short-, medium- or long-term. Material nature-related impacts may be very relevant to investor decisions where they are financially material immediately (for example in the case of a breach of a tailings pond that harms a watershed and municipal drinking water) and/or become financially material over the corporation's longer term (for example, where a corporation's cumulative impacts on nature result in legal claims and/or harm to Indigenous rightsholders or stakeholders). It is our opinion that NRR that arise from nature-related dependencies and impacts are reasonably foreseeable and also capable of being material to a corporation.

Corporate disclosures. Canada lacks a standalone legal framework for mandatory NRR disclosures; however, existing securities laws and disclosure frameworks require disclosure of material risks, which we conclude is inclusive of material NRR. It is our opinion that:

- the identification of an NRR that would reasonably be expected to have a significant effect on the market price or value of the securities of a corporation with a continuous disclosure obligation is a

material fact that must be disclosed through the regular provision of documents such as proxy circulars and financial statements;

- the occurrence of an NRR that causes a change in the business, operations or capital of a corporation with a continuous disclosure obligation 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, is a material change that must be disclosed at the time it occurs; and

- prudent directors should also consider disclosure of NRR in a manner consistent with the Canadian Sustainability Standards Board ("**CSSB**") and the TNFD Recommendations.

Impact of TNFD. The TNFD Recommendations advance a materiality framework under which companies are expected to assess and disclose both how nature-related risks and dependencies affect their business (financial materiality) and how their operations impact nature and ecosystems (impact materiality). Canadian securities law does not currently mandate disclosure based on impact materiality and instead focuses on information that is material to investors (financial materiality). It is our view that it is prudent for corporations to identify, manage, and disclose NRR that have both financial and impact materiality, as this is consistent with acting in the longer-term interests of the corporation, its customers, suppliers, and the environment and the TNFD provides a useful framework for consideration.

Best practices. In Section 8, we outline recommended best practices for directors in managing NRR. They include the recommendations that:

- diligent corporate directors should ensure that, at a minimum, their corporations have a process to identify NRR and assess which NRR are material; and

- directors that identify and assess material NRR, must then take appropriate steps to manage and balance NRR, in accordance with their statutory and common law duties and in the best and long-term interest of the corporation.

1. INTRODUCTION

1. We have been asked to provide our opinion on the duties of corporate directors related to "nature-related risk" under Canadian law.

2. The TNFD defines nature-related risks as: "*potential threats (effects of uncertainty) posed to an organization that arise from its and wider society's dependencies and impacts on nature*."[9] This two-pronged definition includes both threats to the corporation from its dependencies on nature, and threats from the corporation's impacts on nature.

3. Specifically, we have been engaged to consider:

    a. Whether nature-related risks are foreseeable and whether they may constitute material risks of harm to the interests of Canadian corporations?

    b. Whether directors of Canadian corporations are permitted and/or required to consider nature-related risks in order to discharge their fiduciary and related duties under s. 122 of the CBCA,[10] analogous Canadian provincial and territorial statutes, and Canadian common law jurisprudence?

    c. What, if any, obligations do Canadian corporations (and the directors that oversee them) have related to: (i) systems to assess the disclosure of nature-related dependencies and impacts; and (ii) the disclosure of nature-related risks?

    We have also been asked to consider the following matters as we undertake the above analysis:

    d. The potential for directors to face statutory, regulatory or other claims or actions related to nature-related risks (which, by definition, arise from nature-related impacts of the corporation).

    e. The potential impact of the TNFD Recommendations[11] on our assessment of directors' duties and disclosure obligations related to nature-related risks.

4. This opinion is intended to assist corporate directors in Canada in understanding their existing legal duties concerning nature-related risks and facilitating a diligent approach to their identification, management and disclosure. It reflects the complex and inter-dependent characteristics of nature, and approaches nature-related risks as a multi-dimensional category of risk, not a single-faceted risk. It is organized as follows:

    1. Introduction

    2. Relevant Nature-related Concepts and Definitions

    3. The Current Context

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[9] TNFD, Glossary, p. 41.
[10] *Canada Business Corporations Act*, R.S.C., 1985, C-44.
[11] TNFD, *Recommendations of the Taskforce on Nature-related Financial Disclosures* (September 2023)

4. Foreseeability of Nature-related Risks

5. Fiduciary Duty and the Duty of Care

6. Materiality of Nature-related Risks

7. Nature-Related Corporate Disclosures

8. Best Practices

5. Our analysis of directors' duties relating to nature-related risks in Canada is grounded in the fiduciary duty and the duty of care required of directors of Canadian corporations pursuant to s. 122(1) and (1.1) of the CBCA", which stipulate:

> ***122 (1)*** *Every director and officer of a corporation in exercising their powers and discharging their duties shall:*
>
> *(a) act honestly and in good faith with a view to the best interests of the corporation; and*
>
> *(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.*
>
> ***(1.1)*** *When acting with a view to the best interests of the corporation under paragraph (1)(a), the directors and officers of the corporation may consider, but are not limited to, the following factors:*
>
> ***(a)*** *the interests of*
>
> *i. shareholders,*
>
> *ii. employees,*
>
> *iii. retirees and pensioners,*
>
> *iv. creditors,*
>
> *v. consumers, and*
>
> *vi. governments;*
>
> ***(b)*** *the environment; and*
>
> ***(c)*** *the long-term interests of the corporation.*

6. Our analysis also reflects Canadian law and jurisprudence pertaining to constitutionally enshrined Indigenous rights, and the law pertaining to "materiality" and continuous disclosure obligations.

2. RELEVANT NATURE-RELATED CONCEPTS AND DEFINITIONS

8. We have relied upon the terms "*nature*" and "*nature-related risks*" as defined by the TNFD throughout this opinion. The TNFD definitions of these terms are consistent with the approach of global authorities including the WEF, OECD, FSB, NGFS, the International Organization for Standardisation ("**ISO**"), the International Sustainability Standards Board ("**ISSB**"). Specifically,

    a. "**nature**" means "*the natural world, with an emphasis on the diversity of living organisms (including people) and their interactions among themselves and with their environment*".[12] We note that nature includes all land, water and atmosphere, and is not limited to climate; and

    b. "**nature-related risks**" means "*potential threats (effects of uncertainty) posed to an organization that arise from its and wider society's dependencies and impacts on nature*."[13] Nature-related risks include, but are not limited to, climate-related risks.

9. This two-pronged approach to nature-related risks includes both**:** (i) the impact of nature-related risks on the corporation; and (ii) the nature-related risks that may arise from the corporation's impacts on nature. This approach is integral to our analysis, and in particular our assessment of directors' duties and the potential materiality (including impact materiality) in Sections 5 and 6 of this opinion.

10. Nature-related risks may be further sub-classified as:

    a. "**nature-related physical risks**" that result "*from the degradation of nature (such as changes in ecosystem equilibria, including soil quality and species composition) and consequential loss of ecosystem services that economic activity depends upon. These risks can be chronic (e.g., a gradual decline of species diversity of pollinators resulting in reduced crop yields, or water scarcity) or acute (e.g., natural disasters or forest spills). Nature-related physical risks arise as a result of changes in the biotic (living) and abiotic (non-living) conditions that support healthy, functioning ecosystems."*[14] These risks are usually location-specific that materialize as direct results of an organization's dependencies on nature (which can in some cases be indirectly caused by the organisation's own impacts on nature);[15]

    b. "**nature-related transition risks**" that are "*risks to an organization that stem from a misalignment of economic actors with actions aimed at protecting, restoring, and/or reducing negative impacts on nature. These risks can be prompted, for example, by changes in regulation and policy, legal requirement or precedent, technology, or investor sentiment and consumer preferences. They can also arise from activities aimed at restoring nature that no longer align with, for example, revised policies*";[16]

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[12] Taskforce for Nature-related Financial Disclosures, Glossary Version 3.0 (January, 2025), p. 39, subject to paragraph 6 of this analysis. ("**TNFD Glossary**").
[13] TNFD, Glossary, p. 41.
[14] *Ibid*., p. 40.
[15] See Government of Canada, *Toward a 2030 Biodiversity Strategy for Canada: Halting and reversing nature loss*, (2023), p. 4).
[16] TNFD Glossary, p. 41.

c. "**nature-related systemic risks**" that are "*risks arising from the breakdown of the entire system, rather than the failure of individual parts. Nature-related systemic risks are characterised by modest tipping points combining indirectly to produce large failures and cascading interactions of physical and transition risks. One loss triggers a chain of others and stops systems from recovering their equilibrium after a shock*;"[17] and

d. "**nature-related legal risks**" that are risks of additional legal or regulatory requirements, claims, or actions largely associated with nature-related transition risks, physical risks, and impacts on nature.[18]

11. Implicit in these elements of nature-related risks are both a corporation's nature-related dependencies and nature-related impact, that affect a corporation's economic activities and value chain as a result of the corporation's reliance or dependence on nature. We rely on the following TNFD definitions of these terms in this opinion:

a. "**nature-related dependencies**" are "*aspects of environmental assets and ecosystem services that a person or an organization relies on to function. A company's business model, for example, may be dependent on the ecosystem services of water flow, water quality regulation and the regulation of hazards like fires and floods; provision of suitable habitat for pollinators, who in turn provide a service directly to economies; and carbon sequestration*";[19] and

b. "**nature-related impacts**" are "*[c]hanges in the state of nature (quality or quantity), which may result in changes to the capacity of nature to provide social and economic functions. Impacts can be positive or negative. They can be the result of an organization's or another party's actions and can be direct, indirect or cumulative. A single impact driver may be associated with multiple impacts*."[20]

12. We note that while certain nature-related dependencies and impacts may have positive impacts on corporations, this analysis is focused on the negative risks of such dependencies and impacts to the financial and long-term interests of the corporation, the environment, and broader stakeholders. This is consistent with the plain meaning of "risk" as "*(exposure to) the possibility of loss, injury, or other adverse or unwelcome circumstance; a change or situation involving such a possibility*".[21] We refer to this two-pronged, inclusive construct of negative, nature-related risks throughout this opinion as "**Nature-Related Risks**" or "**NRR**".

13. Our analysis of NRR, so construed, also uses the following terms implicit in, and often used interchangeably with, 'nature' including:

a. "**biological diversity**" (or "**biodiversity**") meaning "*the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and*

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[17] *Ibid*., p. 41.
[18] University of Cambridge Institute for Sustainable Leadership, Handbook for Nature-related Financial Risks (March 2021) 7; NGFS: A call for action, Climate change as a source of financial risk (April 2019) 12, 14; NGFS, Overview of Environmental Risk Analysis by Financial Institutions (September 2020) 7, 44
[19] TNFD Glossary, p. 15.
[20] *Ibid*., p. 27.
[21] Oxford English Dictionary, "Risk", revised March 2025.

the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems";[22]

b. "**ecosystem**" meaning *the dynamic complex of plants, animals, and microorganisms, and their non-living environment, interacting as a functional unit*,[23] such as deserts, coral reefs, wetlands, and rainforests;

c. "**ecosystem services**" meaning "*the contributions of ecosystems to the benefits that are used in economic and other human activity*."[24] This definition may also be described as "**nature's contributions to people**", including "*all contributions — beneficial and detrimental — that people, individual or collectively at various scales, derive or endure from nature*."[25] Ecosystem services fall into three categories: (a) provisioning services, such as the provision of crops, wood or water; (b) regulating and maintenance services, such as water flow regulation and climate regulation services; and (c) cultural services, such as recreation and tourism opportunities;[26] and

d. "**natural capital**" meaning "*the stock of renewable and non-renewable natural resources (e.g., plants, animals, air, water, soils, minerals) that combine to yield a flow of benefits to people*".[27]

14. We also use a number of related terms to refer negative impacts on nature, including "**nature loss"**, "**biodiversity loss",** and **"ecosystem collapse"**.[28] We note that the term climate change is not synonymous with biodiversity loss**,** but is identified as one of its five main drivers.[29]

[22] CBD, Article 2.
[23] TNFD Glossary, p. 17.
[24] *Ibid*., p. 18.
[25] TNFD Glossary, p. 39.
[26] TNFD Recommendations, p. 26.
[27] TNFD Glossary, p. 38.
[28] All as defined or referenced in the TNFD Glossary; WEF, Global Risks Report (2025); and The World Bank, The Economic Case for Nature (2021).
[29] Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Assessment Report on Land Degradation and Restoration, Glossary (2018) at 657, with other drivers including pollution, land use change, invasive species, and zoonoses (infectious diseases (such as rabies, Lyme disease, Ebola) that can be transmitted from animals to humans a variety of pathogens, including bacteria, viruses, parasites, and fungi).

3. THE CURRENT CONTEXT

15. This section is intended to provide Canadian directors with: (i) a detailed overview of the plethora of information on biodiversity loss and NRR globally and in Canada; and (ii) consolidated information on legal, policy, and business responses to NRR. We rely upon the information set out in this section to assist us in reaching our opinions on legal and jurisprudential requirements that include an assessment of "prudence", "reasonableness", "similar circumstances", "the current time", and "context", as set out herein.

3.1. International context

16. NRR, including the loss of biodiversity, have long been identified as a major global risk that are the subject of collective global action.[30] The urgent and pressing nature of this class of risk is now evident. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services recently found that biodiversity loss is occurring at an accelerated rate that is 10 to 100 times higher than that of the past million years.[31]

17. There is emerging international recognition of corporations' nature-related impacts and dependencies across the world. Various reports and studies conducted by organizations such as the OECD, WEF, the World Bank, NGFS, FSB and major accounting firms including PwC and EY, discussed below, have considered and specifically identified the biodiversity crisis and NRR as emerging and material risks for the global economy.

18. In 2019, the OECD issued a report to the G7 Environment Ministers describing how impacts and dependencies on nature can create risks for business and financial organizations.[32] In 2021, the OECD found that: "*[a]ll economic activities both impact and depend on nature and its biodiversity. At least USD 44 trillion of economic value generation — over half of the world's GDP — is moderately or highly dependent on nature*."[33] A whole-economy approach is therefore needed to address the multiple pressures driving biodiversity's decline and to ensure the continued provision of ecosystem services.

19. The OECD found that biodiversity (species, ecosystems, and genetic diversity) provides ecosystem services crucial for all life on Earth, such as flood protection, nutrient cycling, pollination, and carbon regulation. Yet we are "destroying our natural capital at an unprecedented rate, posing significant but often overlooked risks to the economy, the financial sector and the well-being of current and future generations."[34] From 1970 to 2014, wildlife populations declined on average by 60%.[35]

20. The same OECD report also noted that the value of biodiversity and associated ecosystem services tends not to be reflected in economic decision-making. It is therefore critical to systematically

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[30] CBD, 1992.
[31] Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Summary for policymakers of the global assessment report on biodiversity and ecosystem services (25 November 2019).
[32] OECD, Biodiversity: Finance and the Economic and Business Case for Action, (May 2019), pp. 12-13.
[33] OECD, Biodiversity, Natural Capital and the Economy: A Policy Guide for Finance, Economic and Environment Ministers, (May 21 2021), p. 11.
[34] *Ibid*., p. 6.
[35] OECD, Finance and the Economic and Business Case for Action, p. 24.

integrate biodiversity considerations into national, sectoral (e.g., agriculture, fisheries, infrastructure), and subnational strategies, plans, programmes and projects.[36]

21. In 2021, the World Bank published a detailed NRR report which estimated that if no action is taken, 46 million hectares of natural land could be converted to cropland, pastureland and forest plantations by 2030, leading to a **loss of global real GDP of up to USD 225 billion**.[37] The sectors most affected would be agriculture, fisheries and industries dependent on timber. The report further shows that, by a conservative estimate, the collapse of three ecosystem services — wild pollination, provision of food from marine fisheries and timber from native forests — **could result in a decline in global GDP of USD 2.7 trillion in 2030**.[38]

22. In 2021, EY produced a report on the biodiversity imperative in financial services. It found that NRR are far-reaching in breadth and magnitude across the local, national and global economy, and today's decisions will determine the size and magnitude of future risks.[39]

23. In 2022, the NGFS, a group of central banks and their financial and prudential supervisory authorities, found that **biodiversity loss is within their mandate as a threat to global financial stability**.[40]

    a. The NGFS now has 145 members across over 90 countries and 22 observers, and the NGFS membership now covers 100% of the world's central banks and 80% of the internationally active insurance groups.[41]

    b. The NGFS has recently produced a number of subsequent nature-related reports, including a nature-related financial risk conceptual framework[42] for their members and a nature-related litigation risk report.[43]

    c. Separate studies conducted for central banks in UK, EU, Netherlands, Malaysia, France and Brazil have all found that their country's financial sectors are highly dependent on ecosystem services and similarly exposed to NRR.[44]

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[36] *Ibid*., p. 7.
[37] The World Bank, The Economic Case for Nature, (2021) 8.
[38] *Ibid*., 72.
[39] EY, Waking up to nature — the biodiversity imperative in financial services (October 2021).
[40] NGFS and INSPIRE, NGFS Occasional Paper: Final Report of the NGFS-INSPIRE Study Group on Biodiversity and Financial Stability (March 2022); and the more recent NGFS 2024 report.
[41] NGFS, *Membership*.
[42] NGFS, "Nature-related Financial Risks: a Conceptual Framework to guide Action by Central Banks and supervisors", (July 2024).
[43] NGFS, "Nature-related litigation: emerging trends and lessons learned from climate-related litigation", (July 2024).
[44] GFI, Assessing the Materiality of Nature-Related Financial Risks for the UK (2024); ECB, Physical risk and the implications for financial stability (Nov 2023), The impact of the euro area economy and banks on biodiversity (Dec 2023); De Nederlandsche Bank, Indebted to nature — Exploring biodiversity risks for the Dutch financial sector (2020); Bank of Malaysia and the World Bank, An Exploration of Nature-Related Financial Risks in Malaysia (2022); Banque de France, A "Silent Spring" for the Financial System? Exploring Biodiversity-Related Financial Risks in France (2021); Calice, P., Kalan, F.D., & Miguel, F., Nature- Related Financial Risks in Brazil (August 2021).

24. In 2023, PwC estimated that USD 58 trillion of economic value generation, equivalent to 55% of the world's GDP, is moderately or highly dependent on nature and its services and is therefore very exposed to nature loss.[45,46]

25. In 2024, the WWF's *Living Planet Report* 2024 found that biodiversity (species, ecosystems and genetic diversity) provides ecosystem services crucial for all life on Earth, such as flood protection, nutrient cycling, pollination and carbon regulation. Yet we are destroying our natural capital at an unprecedented rate, posing significant but often overlooked risks to the economy, and the well-being of current and future generations. From 1970-2020, wildlife populations declined on average by 73%, including declines across all systems: terrestrial (69%), freshwater (85%), and marine (56%).[47]

26. In 2024, the WEF's *Global Risks Report 2024* found that **"***biodiversity loss and ecosystem collapse*" is one of the top three global risks. In 2025, the WEF's *Global Risks Report 2025* upgraded these NRR to second top risk over 10-years, "*with a significant deterioration compared to its two-year ranking.*"[48] The proximity of these risks is growing in recognition; they experienced one of the largest increases in ranking by WEF across all risks, moving from 37 in 2009 to 2 in 2025.[49] Biodiversity loss is emerging as a vital global issue that demands urgent consideration.[50]

27. The WEF also identified the three largest sectors that are highly dependent on nature (construction, agriculture and food and beverages),[51] noting that they "*rely on either the direct extraction of resources from forests and oceans or the provision of ecosystem services such as healthy soils, clean water, pollination and a stable climate. As nature loses its capacity to provide such services, these sectors* ***could suffer significant losses***".[52]

28. These very significant impacts are not limited to business sectors that are highly dependent on nature, given the profound impact that they have on supply chains:

> "…*the consequences for secondary and tertiary industries can also be significant. For example,* ***six industries — chemicals and materials; aviation, travel and tourism; real estate; mining and metals; supply chain and transport; retail, consumer goods and lifestyle*** *— with less than 15% of their direct GVA [gross value added] highly dependent on nature, still have "hidden dependencies" through their supply chains.* ***More than 50% of the GVA of their supply chains is highly or moderately dependent on nature***".[53]

29. The WEF also concluded that:

> "*As nature continues to deteriorate, businesses progressively run more risk.* ***This risk is not only reputational and legal*** *— as more consumers and governments become aware of and act on nature loss.* ***It is also operational and financial*** *— as direct inputs disappear*

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[45] Ibid., pp. 12-14.
[46] PwC, Managing nature risks: From understanding to action, (April 2023)
[47] WWF, Living Planet Report 2024 — A System in Peril, (2004), p. 24.
[48] WEF, Global Risks Report 2025, (January 2025), p. 9.
[49] Ibid., p. 67.
[50] WEF, Nature Risk Rising (January 2020), pp. 8, 12-14.
[51] Ibid., p. 8.
[52] WEF, Nature Risk Rising (January 2020), p. 13, emphasis added.
[53] *Ibid*., pp. 8, 12-14, emphasis added.

and ecosystem services, on which businesses depend, stop functioning. As nature declines, the prospects for business success and future prosperity dwindle".[54]

30. In 2024, the global FSB published a report on NRR"", which highlighted that biodiversity loss and **nature risks may have profound effects on the real economy and, in turn, the financial system**.[55] These risks can occur through transmission channels for financial risks considered in prudential settings (e.g., credit risks, market risks, and operational risks), and such risks may then feedback to the real economy. In addition, efforts to "*prevent the loss of such ecosystem services could raise financial risks for firms that are forced to write-down assets that are no longer economically viable*".[56]

31. **Water, agriculture, and energy sectors have all been identified as highly dependent on nature services**, upon which many other sectors of the economy also depend.[57] NRR that occur in these key sectors are therefore likely to result in cascading impacts or "ripple effects" through supply chains and the real economy.

32. Despite the increasingly destabilizing geopolitical context, including trade and political tensions between Canada and the US, the evidence above from leading international authorities is consistent with the finding that NRR are foreseeable, pressing, and urgent in the near term, and they may, subject to specific assessment for each corporation, pose a material risk of harm to the interests or Canadian corporations.

3.2. Nature in Canada

33. Biodiversity loss in Canada is consistent with significant world trends.[58] Canada has lost 80% of its original wetlands in and around urban areas.[59] Approximately 80% of native prairie grasslands in Canada have been cultivated.[60] Populations of aerial insectivores (birds that feed by catching insects in flight) have declined by 59% since 1970.[61] One-fifth of species in Canada assessed as part of the *Wild Species 2020* report are at some level of risk of extinction.[62] Further, the loss of biodiversity compromises the health and integrity of ecosystems and decreases species' resilience in the face of growing threats, further jeopardizing their long-term survival.

34. NRR for Canadian companies encompass a range of environmental factors that can materially impact operations, financial performance, and reputation. In Canada, these risks include, among others: biodiversity loss; water scarcity and quality; deforestation and land degradation; climate change and extreme weather; and invasive species and disease. NRR for Canadian companies

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[54] *Ibid*., emphasis added.
[55] Financial Stability Board, Stocktake on Nature-related Risks Supervisory and regulatory approaches and perspectives on financial risk (July 2024), p. 1.
[56] *Ibid*, p.7.
[57] *Ibid*, p.8.
[58] Canada's 2030 Nature Strategy, p. 5: "*Up to 1,000,000 species globally are threatened with extinction, and the condition and extent of natural ecosystems have declined by an average of 47% relative to their earliest estimated states*."
[59] Canada, "Canadian biodiversity: ecosystem status and trends 2010 / prepared by federal, provincial and territorial governments", (2010).
[60] Canada, "Management of Canadian Prairie Rangeland", (2010).
[61] North American Bird Conservation Initiative Canada, "The State of Canada's Birds", (2019).
[62] Canadian Endangered Species Conservation Council National General Status Working Group "Wild Species 2020 The General Status of Species In Canada", (2020).

may also include **Indigenous rights and land claims,** and impacts of the corporation on Indigenous rightsholders.

35. NRR are particularly relevant in sectors with high environmental and nature dependencies or impacts, such as forestry, manufacturing, financial services, insurance, mining, agriculture, real estate, and energy. Directors may be required to regularly evaluate and manage these risks, as failing to address them can lead to operational disruptions, regulatory consequences, community opposition, and reduced access to capital.

3.2.1. Nature-Related Dependencies

36. Three of Canada's largest industries — real estate, rental, and leasing; manufacturing; and mining, quarrying, and oil and gas extraction[63] — are all recognized as industries with **high-level supply chain dependencies on biodiversity**,[64] and are exposed to nature-related physical risk. These industries contributed over CAD 291 billion (>10%), CAD 213 billion (~10%) and CAD 112 billion (5%) respectively, to the Canadian GDP of CAD 2.142 trillion in 2023.[65]

37. Sectors of the Canadian economy also depend on a number of provisioning **ecosystem services**, including:

    a. timber provisioning for forestry (Canada's forest sector contributed CAD 33.4 billion to Canada's nominal GDP in 2022);[66]

    b. crops provisioning for agriculture (the primary agriculture sector, excluding aquaculture, contributed CAD 28.1 billion or 1.4% towards Canada's GDP in 2018);[67] and

    c. fish provisioning for fisheries and aquaculture (fishing, hunting and trapping, aquaculture and fish processing industries contributed CAD 4.5 billion or 0.2% to Canada's GDP in 2018).[68]

38. A 2021 study determined that the economic value of ecosystem services in Canada's ecozones is estimated to be at least **USD 3.6 trillion per year, more than double Canada's GDP in 2018**.[69] Accordingly, the GDP impact of ecosystem services, and by corollary threats to ecosystem services in Canada, demonstrates that NRR are capable of being material risks at a macro level.

39. The following reports and studies are relevant to understanding the value of nature and ecosystem services for Canada and particular regions of the country, as well as the magnitude of the nature-related physical risk for Canadian businesses:

    a. A 2008 report on the value of ecosystem services in Ontario's Greenbelt, which was designated to safeguard key environmentally sensitive lands, watersheds and farmlands,

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[63] Statistics Canada, Gross domestic product (GDP) at basic prices, by industry, annual average (x 1,000,000) (2024).
[64] WEF, Nature Risk Rising, pp. 8, 12-14,
[65] Statistics Canada, Gross domestic product (GDP) (2024).
[66] Natural Resources Canada, The State of Canada's Forests Annual Report 2023 (2023) 5.
[67] Statistics Canada, Accounting for ecosystem change in Canada (2022) section 4.1.
[68] *Ibid*.
[69] Molnar, M., et. al. Ecosystem Services; Chapter 5 in Canada in a Changing Climate: National Issues Report (2021), (eds.) F.J. Warren and N. Lulham, Government of Canada, Ottawa, Ontario, 271.

found that: "*The Greenbelt's wetlands and forests hold the greatest value [compared to other ecosystem services provided by the Greenbelt's natural capital], worth over $2.3 billion. Wetlands are worth an estimated $1.3 billion per year ($14,153/hectare) because of their high value for water regulation, water filtration, flood control, waste treatment, recreation, and wildlife habitat. Forests provide key services worth $989 million each year because of their importance for water filtration services, carbon storage services, habitat for pollinators, wildlife, and recreation*."[70]

b. A 2009 update on the original 2005 report on the value of Canada's boreal ecosystems found that:[71]

   i. "*The estimated net market value of boreal natural capital extraction in the year 2002 is $50.9 billion. If accounted for, boreal natural capital extraction would equate to 4.4% of the value of Canada's GDP in 2002. The net market value calculation is based on the contribution to Canada's GDP from boreal timber harvesting; mineral, oil, and gas extraction; and hydroelectric generation ($62.0 billion; or $106.15 per hectare of the boreal ecosystem land base) minus the estimated CAD 11.1 billion in environmental costs (e.g., air pollution costs) and societal costs (e.g., government subsidies) associated with these industrial activities*."

   ii. "*The estimated total non-market value of boreal ecosystem services in the year 2002 is $703 billion (or $1,204 per hectare of the boreal ecosystem land base). If accounted for, boreal ecosystem services would equate to 61% of the value of Canada's GDP in 2002*."

   iii. "*The ecosystem services with the highest economic value per year are (1) carbon storage by forests and wetlands — $582 billion (2) flood control and water filtering by peatlands — $77.0 billion; (3) flood control and water filtering and biodiversity provided by non- peatland wetlands — $33.7 billion; (4) pest control services by birds in the boreal forests — $5.4 billion; and (5) nature-related activities — $4.5 billion.*"

c. A 2016 study examined the relationship between the demand and supply of selected ecosystem services in Canada and how this relationship may change in 2050, compared to 2015, considering a single driver of biodiversity loss — climate change.[72] It found that climate change may cause several of the selected ecosystem services to be subject to demand that outstrips supply by 2050. Affected ecosystem services include: (i) crop provisioning, storm protection, and pest and disease regulation (demand will slightly outstrip supply); and (ii) fisheries, climate stabilization, and pollination ecosystem services (demand will far outstrip supply). Businesses in sectors dependent on these ecosystem services directly, such as agriculture and aquaculture, or through their supply chains, such

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[70] David Suzuki Foundation, Ontario's Wealth, Canada's Future: Appreciating the Value of the Greenbelt's Eco-Services, (2008), p. 2.

[71] Anielski, M., & Wilson, S., Counting Canada's Natural Capital: Assessing the real value of Canada's boreal ecosystems (2009) Canadian Boreal Initiative & The Pembina Institute, p. 2. Note all figures in CAD.

[72] Scholes, R.J., Climate Change and ecosystem services (2016) Wiley Interdisciplinary Review, 7(4), 537-550 see also Molnar, M., et al., Ecosystem Services: National Issues Report (2021) 279 for graphic visualisation.

as construction and real estate, are therefore likely to be exposed to high levels of nature-related physical risks.

d. A 2021 study examined the economic value of 13 ecosystem services from five ecosystems (forests, wetlands, croplands, prairies and grasslands, and freshwater systems) in Canada's Capital Region (Ottawa-Gatineau region).[73] It determined that the economic value of these services amounts to an average of CAD 332 million, which represents a mean value of CAD 6,014/ha/year, and a total economic value of over CAD 5 billion, annualized over 20 years.

e. A 2024 study on the value of ecosystem services provided by wetlands, estimates an annual Canada-wide flow value of carbon sequestration services at roughly CAD 21.8 billion, and CAD 201.8 billion for water filtration services.[74]

3.2.2. NRR in the Canadian North and Arctic

40. Canada's northern and Arctic regions are subject to particular NRR according to *Canada's Changing Climate Report*.[75] They are warming at a rate nearly three times faster than the rest of the country. Canada's overall mean annual temperature increased about 1.7ºC between 1948 to 2016, but in the north, the increase was 2.3ºC over the same period[76] (nearly four times the global mean warming rate).[77] This rate of warming may have significant nature-related impacts on the forestry, mining, oil and gas, and extractive sectors that are reliant on Arctic ecosystems.

41. The resulting impacts on terrestrial, aquatic, and marine ecosystems will have ripple effects to those sectors of the economy that rely on these ecosystems and include:

a. changes in peak pre-melt snow mass and the timing of snow melt across the country impacting freshwater supply for communities;

b. earlier peak stream flows as a result of increased rain precipitation instead of snow, with earlier spring thaw, further causing subsequent reduced summer and autumn flows;

c. challenges for marine shipping in the Arctic impacted by the timing of summer sea ice-free conditions for Canadian regions;

d. challenges for overland transportation in the sub-Arctic and Arctic, both for goods transported via ice roads and for local access to the land caused by changing lake and river ice conditions;

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[73] L'Ecuyer-Sauvageau C, et. al., The economic value of Canada's National Capital Green Network (2021) PLoS One, 16(1).
[74] Institute for Sustainable Finance, The Wealth of Wetlands: Measuring the Economic Value of Two Critical Ecosystem Services in Canada (June 2024), pp. 10, 11.
[75] Bush, E. and Lemmen, D.S., editors (2019): Canada's Changing Climate Report; Government of Canada, Ottawa, ON. 444. ("**CCCR**").
[76] CCCR, p. 116-118.
[77] *Ibid*., p. 118; Rantanen, M., Karpechko, A.Y., Lipponen, A. et al. The Arctic has warmed nearly four times faster than the globe since 1979. *Commun Earth Environ* 3, 168 (2022).

e. significant increases in greenhouse gases and contaminants released from thawing permafrost; and

f. increased costs of infrastructure and development in the northern Canada caused by permafrost degradation. [78]

3.2.3. Sector-specific NRR in Canada

42. Sector-specific NRR to Canadian corporations and the economy include:

a. **Forestry**. NRR may arise from biodiversity loss, deforestation, unsustainable harvesting methods, regulatory changes, water scarcity, and impacts on Indigenous rights. The sector's nature-related impacts include deforestation, which can lead to biodiversity loss and soil degradation. This can create NRR such as reducing forest productivity and creating legal and reputational costs for the corporation. Forestry companies must also comply with increasingly stringent forest management regulations to avoid fines and retain access to global markets. Indigenous rights and title may also be negatively impacted by forestry activities.

b. **Mining**. NRR arise from water scarcity, habitat destruction, pollution, and Indigenous rights. The mining industry depends on biodiversity for mineral extraction[79] (nature-related dependency) and negatively impacts biodiversity directly through the same mineral extraction, site preparation for mine expansion and waste management resulting in habitat loss and degradation[80] (nature-related impact). In addition, extractive industries often require large amounts of water and can pollute local water sources, damaging ecosystems and creating tension with nearby communities and Indigenous rightsholders that are dependent on nature (nature-related impact).

c. **Agriculture and food industries**. NRR arise from land degradation, water scarcity, biodiversity loss, and climate change. Unsustainable farming practices can lead to soil degradation and depletion of water resources (nature-related impact), making farming less viable over time. Large-scale monoculture farming can significantly deplete soil quality and nutrients and reduce biodiversity (nature-related impact), increasing vulnerability to pests and diseases and potentially leading to lower yields and financial losses. In addition, projections of longer growing seasons benefiting agriculture due to climate change may be overly optimistic, as they often overlook the negative effects of increased spring floods and summer drought.[81] The production of food is also highly dependent on the ecosystem services provided by pollinators such as bees, insects, and certain birds (nature-related dependency), which are in decline as a result of pesticide use.

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[78] *Ibid*., p. 241 (citations omitted).
[79] ENCORE, Diversified Metals and Mining: Dependencies (2024).
[80] Wickham J., et al., The overlooked terrestrial impacts of mountaintop mining (2013) *Bioscience* 63(5); Csavina J., et. al., A review on the importance of metals and metalloids in atmospheric dust and aerosol from mining operations (2012) *Science of The Total Environment* 433.
[81] Canadian Climate Institute, Tip Of The Iceberg: Navigating the known and unknown costs of climate change for Canada Climate Atlas of Canada, (2020); Climate Atlas of Canada, Agriculture and Climate Change, (2020).

d. **Manufacturing**. NRR arise from reliance on renewable and non-renewable resources, provisioning ecosystem services, water use regulation, and water purification services.[82] For example, manufacturers may rely on the supply of renewable, biological materials (e.g., fibres, foods) while others use genetic resources, including pharmaceutical, agriculture, industrial biotechnologies, cosmetics, botanicals, and food and beverage sectors (nature-related dependency).[83] Declining biodiversity may result in the collapse of ecosystem services that manufacturers of certain products rely on, or become unsustainable or economically unfeasible. The waste, packaging and manufacturing processes of manufacturers may also damage waterways ecosystems in a manner that materially harms other entities relying on ecosystem services from those ecosystems (nature-related impacts).

e. **Energy**. NRR in the energy sector include extreme weather, water availability, and land degradation. Many energy projects across Canada increasingly face risks from changing weather patterns, droughts, and dependencies on scarce resources. For example, prolonged droughts, shifting weather patterns, and inadequate water management practices can have severe impacts on hydropower generation and oil and gas operations.[84] The impacts of the Fort McMurray wildfires in 2016 exemplify the material impacts that NRR had on energy companies (with total losses from the fires estimated at CAD 8.86 billion).[85] In addition, the energy companies' extracted fuels that were stored by many Fort McMurray inhabitants contributed to the impacts on nature — acting as an accelerant to many of the unprecedented wildfires in the area (nature-related impacts). Energy projects also face significant regulatory oversight and community engagement, where environmental and biodiversity impacts must be mitigated and protection plans developed and implemented throughout all stages of a project.

f. **Real estate and infrastructure development.** NRR to real property include climate change, extreme weather, flooding, water scarcity, and biodiversity loss. Insurance is an integral part of the real estate supply chain, and the lack of availability of insurance due to extreme climate events may also pose an NRR for the real estate and infrastructure sectors. The real estate industry depends on existing habitats and ecosystem services to thrive (for example, bio-remediation).[86] Natural landscapes may increase property value and result in increased demand for new housing, and vegetation and soil quality can provide a natural defence against flood and storm risks (nature-related dependencies).[87] Real estate developers and asset owners face increased risk from extreme weather events, such as flooding and wildfires, which damage property, reduce asset value, and decreased ability to mitigate those risks through property and casualty insurance. The construction of real estate often involves clear cutting and the disruption of natural water ecosystems that may exacerbate soil erosion and flooding for communities (nature-related impacts), which may subsequently seek legal recourse against real estate developers. NRR have also caused insurers to exit jurisdictions creating critical supply gaps in the

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[82] CBD, Note by the Executive Secretary, Biodiversity Mainstreaming in the Manufacturing and Processing Sector, CBD/SBI/2/4/Add.4. (May 2018) 3.
[83] CBD, Factsheet and Briefs, Bioscience at a Crossroads (August 2017).
[84] Financial Stability Board, Stocktake on Nature-related Risks Supervisory and regulatory approaches and perspectives on financial risk (July 2024), p. 8.
[85] W. Snowdon, "Fort McMurray wildfire costs to reach almost $9B, new report says", (January 2017), *CBC News*.
[86] S&P Global, How the world's largest companies depend on nature and biodiversity (May 2023).
[87] PwC, Managing nature risks: From understanding to action, (April 2023).

availability of property and casualty insurance, or significantly increased costs thereof for these sectors. This NRR in the insurance sector is a significant supply chain NRR for the real estate and infrastructure sectors.

g. **Financial services and insurance**. NRR in the financial service and insurance industries include risks associated with their investment and business exposure to environmentally sensitive sectors, nature-dependent industries, climate risk, and changing regulatory expectations, including expected corporate disclosures of NRR under frameworks like the TNFD. Insurance companies face heightened risks from increased claims related to property and agricultural crop damage from extreme weather and biodiversity pressures (nature-related impacts).[88] Financial institutions are increasingly facing legal challenges associated with the impact of their activity to finance high-emission and nature-damaging activities, largely in the extractive sectors (nature-related impacts).

h. **Retail and apparel.** NRR in the retail and apparel industries arise from impacts on soil degradation, conversion of natural ecosystems, and waterway pollution.[89] The apparel industry is highly dependent on fibre that is both grown naturally and manufactured from oil products (nature-related dependency). The industry also has significant impacts on nature and biodiversity, including 22.5% of the world's insecticide use and 10% of all pesticide use for cotton agriculture, more than 150 million trees logged annually for man-made cellulose fibers,[90] 25% of "industrial water pollution from textile dyeing and treatment", and approximately 35% of "primary microplastics in the world's oceans originate from the washing of synthetic textiles" (nature-related impacts).[91]

43. **It is important to note that the Canadian economy is not simply dependent on its own ecosystems, but also those of importing jurisdictions.** The UK's analysis of its financial sector found that around half of UK's nature-related risk comes from overseas, through supply chains and financial exposures. The EU's analysis found that supply chains of euro-area, non-financial corporations are heavily reliant on biodiversity abroad.[92] Given the amount of international trade that Canada engages in, it is also likely that Canada is similarly exposed to overseas biodiversity loss through its international supply chains and investments.[93] Specifically:

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[88] For example, the Insurance Bureau of Canada reports that "*In 2024, for the first time in Canadian history, insured damage caused by severe weather events surpassed $8 billion*", The cost of severe weather in Canada. The property and casualty insurance industry and property owners face significant NRR as a result of extreme weather events linked to climate change, see Sanner, J. "Florida's Climate-Fueled Insurance Crisis", (May 17, 2023), Boston University School of Law, *Review of Banking & Financial Law*; S&P Global, "US homeowners insurance rates jump by double digits in 2023", (25 January 2024); Irina Ivanova, "Farmers Insurance pulls out of Florida affecting 100,000 policies", (July 12, 2023), *CBS News Money Watch*; Ruben Vives, "State Farm won't renew 72,000 insurance policies in California, worsening the state's insurance crisis", (March 23, 2024), Los Angeles Times.

[89] McKinsey & Company, "Biodiversity: The next frontier in sustainable fashion", (July 23, 2020),

[90] *Ibid*., citing Canopy, "Canopy Style" (2020).

[91] *Ibid*., citing Boucher, J. and Friot D. "Primary Microplastics in the Oceans: A Global Evaluation of Sources", (2017)Gland, Switzerland: IUCN. 43pp.

[92] European Central Bank, Living in a world of disappearing nature: physical risk and the implications for financial stability (November 2023), 30.

[93] Green Finance Institute, Assessing the Materiality of Nature-Related Financial Risks for the UK (April 2024), 82.

a. Canada's manufacturing sector is heavily dependent on imports for manufacturing inputs and products (Québec over 65% dependent; Ontario 68% dependent; British Columbia 80% dependent and Canada as a whole 45% dependent).[94]

b. In 2018, more than 50% of the net premiums of Canada's three large life and health insurers were derived from overseas operations and overseas exposures of the banking sector were approximately 29.9% of total claims based on the ultimate risk basis.[95]

c. In 2021, Canadian mining assets abroad totalled CAD 195.9 billion, which accounted for 69% of total Canadian mining assets.[96]

d. In 2023, 47% of Canada's merchandise imports were intermediate goods, indicating a strong reliance on international supply chains for production inputs.[97]

e. Canada's international financial assets totalled CAD 9,037.6 billion at the end of the fourth quarter of 2023.[98] This is more than four times Canada's GDP that year.[99]

3.3. International and Canadian Response to NRR

44. There are two central instruments that have shaped the global response to increasingly material, urgent, and foreseeable biodiversity loss: the *United Nations Convention on Biological Diversity* ("**CBD**")[100] and the TNFD Recommendations.

3.3.1. CBD and GBF

45. The CBD entered into force in December 1993, with the CBD Secretariat hosted by Canada in Montréal, Québec. At the 15th meeting of the Conference of the Parties to the CBD ("**COP**") in 2022, nearly 200 countries agreed to the *Kunming-Montreal Global Biodiversity Framework* ("**GBF**"),[101] which includes a number of substantive obligations on NRR. Canada is a signatory to both the CBD and GBF, and while they are both non-binding on private corporations, they are indicative of expectations and trajectories.

46. The GBF includes four goals and 23 targets for 2030, including the '*30 by 30 targets'*, which aim to restore 30% of degraded ecosystems by 2030 (Target 2) and conserve and manage 30% of global land, inland waters, coastal waters and oceans by 2030 (Target 3).

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[94] Institut de recherche en économie contemporaine, Supply Chain Consultations: Standing Committee on Transport, Infrastructure and Communities, House of Commons, Ottawa (April/May 2022)
[95] International Monetary Fund, Canada Financial System Stability Assessment (June 2019) pp. 18, 35.
[96] Government of Canada, Minerals and the economy (July 2024).
[97] Government of Canada, Office of the Chief Economist, State of Supply Chains (2024).
[98] Statistics Canada, Canada's international investment position, fourth quarter 2023 (March 2024).
[99] Canada's real GDP in 2023 was approximately CAD1.89 trillion: Statista, Real gross domestic product of Canada from 2000-2023.
[100] *Convention on Biological Diversity*, 1760 U.N.T.S. 69 (adopted 5 June 1992, entered into force 29 December 1993).
[101] CBD, *Kunming-Montreal Global Biodiversity Framework*, (19 December 2022), CBD/COP/DEC/15/4).

47. Target 15 is specifically aimed at supporting action by business and directs signatories to take legal, administrative, or policy measures to encourage and enable business, and in particular to ensure that large and transnational companies and financial institutions:

    a. "***Regularly monitor, assess, and transparently disclose their risks, dependencies, and impacts*** *on biodiversity including with requirements for all large as well as transnational companies and financial institutions along their operations, supply and value chains, and portfolios*"; (emphasis added)

    b. "*Provide information needed to consumers to promote sustainable consumption patterns*";

    c. "*Report on compliance with access and benefit-sharing regulations and measures, as applicable; in order to progressively reduce negative impacts on biodiversity, increase positive impacts, reduce biodiversity-related risks to business and financial institutions, and promote actions to ensure sustainable patterns of production.*"[102]

48. Therefore, for NRR disclosures to comply with Target 15 of the GBF (either on a voluntary basis or as mandated by legislation of the reporting jurisdiction), disclosing entities will need to consider "*impact materiality*" (as envisaged by the TNFD Recommendations and discussed further below).[103]

49. Canada has released a nature strategy and a sustainable development strategy to implement its GBF commitments, and draft legislation (Bill C-73) of the now dissolved 44th Parliament.[104] Nature is also a priority of the new Canadian government as set out in Section 3.3.4. Canada's 2030 Nature Strategy (the "**Nature Strategy**")[105] is the federal government's current plan to protect and restore biodiversity, conserve natural habitats, and address ecological challenges across the country by the year 2030. The Nature Strategy aligns with Canada's 30 by 30 commitments under the GBF and supports international goals to halt and reverse biodiversity loss. It sets ambitious targets, including conserving a significant portion of Canada's lands and waters, investing in nature-based climate solutions, and working closely with Indigenous communities.

50. Target 15a of the Nature Strategy, which implements Target 15 of the GBF, sets out expectations and the role for business to meet Canada's commitments:

    a. Target 15a of the Nature Strategy establishes the expectation for Canadian businesses to engage actively in monitoring, assessing, and disclosing their NRR. Large and transnational companies and financial institutions are expected to regularly evaluate their NRR across their operations, supply chains, and investment portfolios. The goal is to reduce negative impacts on biodiversity, encourage sustainable practices, and enhance transparency in environmental performance.

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[102] GBF, Target 15.
[103] *Ibid*., p. 41.
[104] ECCC, *Canada's 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada*, (2024); Government of 2022-2026 Canada Federal Sustainable Development Strategy, (2024); Bill C-73 (First Reading), *An Act respecting transparency and accountability in relation to certain commitments Canada has made under the Convention on Biological Diversity*, (June 13, 2024), which died on the order paper when Parliament was dissolved for the April 28, 2025 election.
[105] ECCC, *Canada's 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada*, (2024).

b. In support of Target 15 of the GBF, the Nature Strategy notes that the federal government will continue working to move toward mandatory climate-related financial disclosures, providing a building block to **prepare companies for biodiversity-related disclosures**.[106]

51. In order for companies to meet expectations under Target 15a of the Nature Strategy, directors should consider implementing comprehensive nature-related monitoring systems, engage with stakeholders and suppliers to gather relevant data, and disclose findings in a transparent way that aligns with emerging standards such as the TNFD Recommendations.

3.3.2. Global Initiatives and Responses to NRR

52. International initiatives and responses to NRR have also included the:

a. TNFD Recommendations (as further discussed in Section 7.2);

b. G7 Metz Charter on Biodiversity;[107]

c. 2020 Leaders' Pledge for Nature, committing to implement the GBF;[108]

d. G7 2030 Nature Compact to reverse biodiversity loss by 2030;[109]

e. Coalition of Finance Ministers for Climate Action report demonstrating the economic and financial risks of nature loss;[110]

f. G20 Bali Leaders' Declaration, committing parties to "strengthen actions to halt and reverse biodiversity loss by 2030" and "scale up efforts to combat biodiversity loss, deforestation, desertification, land degradation and drought";[111]

g. July 2023 Meeting of the G20 Environment and Climate meeting emphasizing actions to address biodiversity loss, pollution and desertification;[112]

h. 2024 G20 Finance Ministers and Central Bank Governors instruction to FSB to do a stocktake of regulatory initiatives associated with the identification and assessment of nature-related financial risks;[113] and

i. April 2024 G7 Meeting of the Ministers of Climate, Energy and Environment commitments to substantially increase national and international nature funding by 2025, mainstream biodiversity conservation, restoration and sustainable use in society (within and across all sectors); measure biodiversity and its links to the economy through environmental-economic accounting frameworks; explore how best to take forward nature reporting

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[106] *Ibid*., p. 89.
[107] Bundesregierung, Metz Charter on Biodiversity, (May 2019).
[108] Government of Canada, Canada joins the High Ambition Coalition for Nature and People, (2020).
[109] G7, G7 2030 Nature Compact, (July 2021).
[110] The Coalition of Finance Ministers for Climate Action, Bending the Curve of Nature Loss - Nature-Related Risks for MoFs, (June 2022).
[111] The White House, G20 Bali Leaders' Declaration, (November 2022).
[112] G20, Development Working Group: 2023 G20 New Delhi Update, (December 2023).
[113] Financial Securities Board, Stocktake on Nature-related Risks: Supervisory and regulatory approaches and perspectives on financial risk, (July 2024).

frameworks, such as the TNFD; and "***encourage companies and financial institutions to familiarise themselves with leading nature-risk assessment and reporting frameworks, to identify and address the evolving nature-related impacts and dependencies, risks and opportunities***". [114]

3.3.3. New Canadian Government Priorities on Nature and NRR

53. Shifts in government policy present significant nature-related transition risks for Canadian corporations. A new Canadian federal government, led by Prime Minister Mark Carney, was elected on April 28, 2025, and prominently featured biodiversity and nature in its election policy platform and priorities, including: the intention to implement the GBF; conserve nature in partnership with Indigenous Peoples; ratifying the "High Seas Treaty"[115]; supporting growth of Canada's marine resource sectors, while advocating for strong evidence-based international protections; prioritizing natural infrastructure; enabling a more holistic ecosystem approach to conservation, carbon accounting, and project development; and proactively rehabilitating and mitigating environmental and species at risk impacts in areas where there will be significant infrastructure development over the next five years.[116] In addition, the mandate letter to each and all federal cabinet ministers identifies fighting climate change and advancing reconciliation and working in partnership with Indigenous Peoples (both aspects of nature and potential NRR) as values of the new federal government.[117]

3.4. Integral Role of Indigenous Rightsholders[118]

54. Indigenous Peoples are increasingly playing a prominent and integral role in Canada and Canada's most recent nature policy guidance.[119] The Aboriginal and treaty rights of Indigenous Peoples are grounded in *sui generis* rights in and around nature that have been manifest since time immemorial.[120] These rights are both constitutionally protected by s. 35 of the Canadian Constitution and the common law. The constitutional rights are grounded in the "honour of the Crown" and impose upon governments, either directly or through delegation, the duty to consult ("**DTC**") and accommodate Indigenous Peoples for any potential adverse effects of government action on Aboriginal and title.[121]

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[114] G7, G7-Climate Energy Environment Ministers' Meeting Communique, (April 2024),

[115] *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction* U.N. Doc. A/CONF.232/2023/4 (adopted 19 June 2023).

[116] Liberal Party of Canada, Canada Strong, (April 2025).

[117] Prime Minister of Canada, Mandate Letter, (May 21, 2025).

[118] The authors note that a comprehensive analysis of Indigenous rights and the DTC as it relates to NRR and the duties of directors is beyond the scope of this opinion. This section, instead, highlights the fundamental and increasing importance of meaningful engagement and consultation with Indigenous Peoples and rightsholders in the Canadian business context, and the potential impacts on the business, operations, and financial prospects of Canadian corporations for failing to adequately consider NRR in the context of Indigenous rights.

[119] Canada Nature Strategy, pp. 10-16.

[120] In *R v Van der Peet*, [1996] 2 SCR 507, the SCC described Aboriginal rights as the rights held by Aboriginal peoples that relate to activities that are an element of a practice, custom, or tradition integral to the distinctive culture of the Aboriginal group claiming such rights, and that have not otherwise been extinguished prior to April 17, 1982, or by treaty.

[121] See Isaac, T., *Aboriginal Law*, fifth ed. (2016), p. 396, citing *R v Gladstone*, [1996] 2 SCR 723, *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, and *Huu-Ay-Aht First Nation et al. v The Minister of Forests et al.*, 2005 BCSC 697.

55. The DTC arises whenever the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal right and contemplates conduct that might adversely affect it.[122] The DTC is substantial and must be discharged meaningfully with proportionate accommodation where impacts on rights are adverse.[123] The DTC is intended to ensure that the Crown acts honourably without undermining s. 35 rights, promotes reconciliation, provides procedural protections, and encourages negotiations and just settlement as alternatives to costly litigation. While the honour of the Crown cannot be delegated, procedural aspects of the DTC can be delegated to industry proponents seeking a particular development, as is often the case for environmental assessments.[124]

56. The DTC, and the failure to uphold the honour of Crown, can present significant NRR for Canadian corporations. For example, Canadian courts have found that the DTC was engaged in government actions that had an adverse impact on nature-related Aboriginal rights, with impacts on Canadian corporations, including the transfer of tree licences which would have permitted the cutting of old-growth forest, the approval of a multi-year forest management plan for a large geographic area, as well as high-level management decisions and structural changes to the management of nature-related resources.[125]

57. Indigenous rightsholders are increasingly becoming equal equity owners and/or participants in major infrastructure projects in Canada. In response, many energy and mining companies have adopted explicit policies to support meaningful equity participation by Indigenous Peoples in projects that are located on, or have a material impact on, their traditional territories and Aboriginal rights. These arrangements reflect a growing recognition of Indigenous jurisdiction, economic reconciliation, and the need to align project development with Indigenous priorities and governance.[126]

58. Indigenous rightsholders have also played an integral role in monitoring and maintaining nature and ecosystem services in Canada. Many implement a "Seventh Generation Principle" approach to decision-making for matters including resource-related decision-making.[127] Certain Indigenous rightsholders have also taken on the role of Indigenous Guardians, bringing to bear their TEK of nature in environmental monitoring and land management, and nature protection systems.[128] This

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[122] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, para 35. ("***Haida Nation***").

[123] For examples, see *Taku River Tlingit First Nation v British Columbia (Project Assessment Director),* 2004 SCC 74; *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCCA 352; *Conseil des innus de Ekuanitshit c. Canada (Procureur général)*, 2013 FC 418; cited by T Isaac, *Aboriginal Law*, fifth ed. (2016), p. 395.

[124] *Haida Nation*, para 53.

[125] *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council,* 2010 SCC 43, at paras 44 and 47; see also *Klahoose First Nation v Sunshine Coast Forest District (District Manager)*, 2008 BCSC 1642, and *Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73.

[126] For example, see Hydro One Networks Inc., Ontario Power Generation, and Enbridge Gas Inc. for examples in Ontario.

[127] See Indigenous Corporate Training Inc., "What is the Seventh Generation Principle?", (May 30, 3030).

[128] ECCC, "Indigenous Guardians". See also Berkes, F. (Sacred Ecology (2nd Edition ed.), (2008), New York: Routledge, p. 7, where the author describes TEK as "*a cumulative body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment*." See also Canada, "Frequently asked questions on Indigenous Knowledge in federal impact assessments", (June 24, 2024), where the Indigenous Advisory Committee to the Impact Assessment Agency of Canada notes the "*Indigenous Knowledge about moose may be shared in a discussion about hunting. However, that knowledge may also be relevant to other important topics. The Indigenous Knowledge shared might speak to how the moose and their ecosystems have evolved — how they relate to plants, water, air, soil and other wildlife. It might also relate to an Indigenous community's cultural, spiritual, health, social, and economic values*."

role is currently expanded in the new government's policy platform both in relation to the Arctic and the north.[129]

59. The *United Nations Declaration on the Rights of Indigenous Peoples*[130] ("**UNDRIP**") also has a significant role in affirming Indigenous rights in Canada. UNDRIP is an international framework that sets out the rights of Indigenous Peoples, including the right to self-determination, cultural preservation, and control over lands, territories, and natural resources. For example, Article 26 of UNDRIP directs states, including Canada, to provide legal recognition and protection to the lands, territories and resources which Indigenous peoples have traditionally owned, occupied or otherwise used or acquired.

60. UNDRIP articulates the principle of Free, Prior, and Informed Consent ("**FPIC**"), which, at minimum, requires Indigenous communities to be meaningfully consulted and to consent before activities affecting their lands and resources are approved by governmental authorities.[131] Obtaining FPIC has a significant impact on corporations involved in resource extraction and mining, infrastructure development, forestry, and energy and other projects with nature-related impacts on Indigenous rightsholders and their treaty lands. Indigenous rights are manifested as a critical nature-related dependency for these sectors as projects and ongoing operations that engage the DTC and FPIC are often highly dependent on obtaining the continuous consent and/or providing accommodations for nature-related impacts on Indigenous rightsholders, Aboriginal rights and title, treaty lands, traditional territories.

61. Early and meaningful engagement, including the adoption and inclusion of TEK, are increasingly important strategies to mitigate potential NRR arising from the anticipated nature-related dependencies and impacts of certain projects on Aboriginal and treaty rights. Indigenous partnerships and equity interests may also confer significant nature-related benefits, such as support for monitoring, species-at-risk identification, environmental assessment, and incorporating TEK into project designs and planning, and are often a pre-requisite or preferential requirement in government procurements for energy and related infrastructure projects in Canada.[132]

62. In 2021, the federal government enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act*,[133] committing to align Canadian laws with UNDRIP principles. The Federal Court of Canada recently noted that the constitutional duty to consult and accommodate must be informed by the application of the principles of UNDRIP, stating that:

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[129] The Liberal Party's Canada Strong campaign policy commits to "[conserving] nature in partnership with Indigenous Peoples by expanding the Indigenous Guardians Program to include 50 new Arctic Indigenous Guardians" and notes that "[t]his will support Indigenous leadership in environmental monitoring and land management ensuring invaluable traditional knowledge is incorporated into nature protection."

[130] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

[131] See also The Coalition For The Human Rights Of Indigenous Peoples, "Free, Prior & Informed Consent", endorsed by the Amnesty International Canada; Assembly Of First Nations; BC Assembly Of First Nations; Canadian Friends Service Committee (Quakers); First Nations Summit; Grand Council Of The Crees (Eeyou Istchee)/ Cree Nation Government; Kairos: Canadian Ecumenical Justice Initiatives; Native Women's Association Of Canada; Union Of BC Indian Chiefs And Dr. Mariam Wallet Aboubakrine, Expert Member, Un Permanent Forum On Indigenous Issues.

[132] See, for example, Ontario's Independent Electricity System Operator's Short, Medium and Long Term Procurement criteria, which strongly favour Indigenous participation.

[133] *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14).

"*The words of the UNDRIP and the resulting commentary regarding its development and interpretation must be used to guide our interpretation of the section 35 framework, and in this application, how the UNDRIP is to be used to interpret the Crown's analysis of the duty to consult and accommodate*."[134]

63. British Columbia's *Declaration on the Rights of Indigenous Peoples Act*[135] requires the government to align the province's laws with UNDRIP; develop an action plan to meet the objectives of UNDRIP in consultation with Indigenous Peoples; regularly report on implementation progress; and notably, enter into agreements with a broader range of Indigenous governing bodies and to exercise statutory decision-making authority together or to obtain the consent of the Indigenous governing body before the exercise of a statutory power of decision.[136]

64. Canada's Truth and Reconciliation Commission ("**TRC**") was established to address the legacy of residential schools and advance reconciliation between Indigenous and non-Indigenous Canadians.[137] Call to Action 92 calls upon the corporate sector in Canada to adopt UNDRIP as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous Peoples and their lands and resources.[138] The implementation of this call to action may include direct equity interests in projects, equitable access to jobs, training, and education for Indigenous Peoples, and implementing Indigenous environmental stewardship principles and TEK.

65. Governments and companies seeking to advance reconciliation with Indigenous Peoples in Canada are increasingly adopting engagement strategies and corporate policies that reference and seek alignment with UNDRIP. Entities and projects — especially those with significant nature-related dependencies and impacts — that fail to respect and facilitate Indigenous rights are likely to encounter negative economic and reputational impacts, community opposition, project delays, legal challenges, and heightened reputational risks. Directors may need to account for Indigenous rights in their risk assessments and planning, especially as Indigenous rightsholders exercise legal authority over land use, planning, and assessment decisions. This is reflected in the recently enacted *One Canadian Economy Act* which received Royal Assent on June 26, 2025 and enacts both the *Free Trade and Labour Mobility in Canada Act* and the *Building Canada Act*, with the federal government noting that "*Indigenous partnership is a vital part of this legislation, and meaningful consultation will be key to the success of future projects. The federal government is committed to respecting the rights of Indigenous Peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and to the United Nations Declaration on the Rights of Indigenous Peoples*."[139]

66. There is a growing body of law and precedent on the cumulative nature-related impacts of corporate actions on Indigenous rights and communities that is also very relevant for diligent directors to understand.

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[134] *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 at para 128.
[135] *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44.
[136] *Ibid*., ss. 3-7.
[137] TRC, *Calls to Action*, (2015).
[138] *Ibid*., p. 10
[139] Canada, "Legislation to build One Canadian Economy receives Royal Assent", (June 26, 2025) *Intergovernmental Affairs*.

67. The cumulative impacts of corporate activity on Indigenous Peoples were the subject of the recent case of *Yahey v British Columbia* ("***Yahey***"),[140] where the BC Supreme Court found that the province of British Columbia had infringed upon Blueberry River First Nations ("**BRFN**") Treaty 8 rights due to the cumulative impacts of decades of industrial development. The court prohibited the provincial government from authorizing further activities, which unjustifiably infringed BRFN's rights, and directed BRFN and the provincial government to negotiate a collaborative approach to land management and natural resource development that would protect BRFNs' Treaty 8 rights.

68. BRFN and British Columbia subsequently entered into an agreement that includes:

    a. an ecosystem-based management approach for future land-use planning in BRFN's most culturally important areas, with ambitious timelines to complete new local and watershed level land use plans;

    b. limits on new petroleum and natural gas ("**PNG**") development and a new planning regime for future oil and gas activities;

    c. protections for old forest and traplines during and through planning; and

    d. land protections in BRFN's high-value areas, which includes more than 650,000 hectares of protection from new PNG and forestry activities and will advance British Columbia's GBF-based goal of 30% land protections by 2030.

69. These requirements effectively provide a framework for identifying and addressing nature-related physical, transition, and legal risks. In particular, it underscores that cumulative nature-related impacts on Indigenous Peoples and on their constitutionally protected rights may give rise to emerging NRR. Corporations that fail to identify and evaluate these NRR may face legal or regulatory measures that restrict their operations where it can be established that the cumulative nature-related impacts infringe Indigenous rights or title.

70. Similarly, in January 2023, the Yaḋit ʔa·knuqɬi'it ("**YQT**") First Nation in British Columbia, signed a landmark deal with NWP Coal Canada,[141] giving YQT the power of a "veto" on proposed coal projects. YQT will become the "reviewer and regulator" of the proposed CAD 400 million Crown Mountain project.

71. These types of agreements and government policy developments indicate that companies whose operations are dependent on or impact nature in traditional territories, or are dependent upon or impact Indigenous communities, Aboriginal rights or traditional territories themselves, have heightened expectations to address NRR associated with this integral group of constitutional rightsholders. For corporations, this growing recognition and economic participation of Indigenous communities also represents an emerging nature-related opportunity to partner with Indigenous communities on projects in pursuit of community support and in accordance with the principles of FPIC (or risk depending on the economic activity and decision-making processes of directors).

72. Indigenous Peoples in Canada have also been at the forefront of the rights of nature movement, which may create further NRR for Canadian corporations. This movement has led to recognizing

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[140] *Yahey v British Columbia*, 2021 BCSC 1287.
[141] The Guardian, "Landmark deals give Indigenous key role in Canada resource projects"", (January 2023).

the rights and legal personality of the Magpie River (Muteshekau-shipu) in northern Québec,[142] as well as a number of developments regarding the legal personhood of the St. Lawrence River, including a resolution passed in 2023 by the Assembly of First Nations Québec-Labrador,[143] and the introduction of a private member's bill in 2021 seeking to introduce private legal rights for the river.[144]

73. Corporations that engage Indigenous rightsholders and communities, whether directly or as a result of the delegated procedural aspects of the DTC, for activities and projects on their traditional territory and treaty lands, should take prudent steps to ensure that they are aware of and act consistently with Indigenous laws, protocols, practices, and customs, including in relation to the rights of nature articulated by Indigenous Peoples in project areas.

74. **It is our opinion that directors must engage and consult meaningfully with potentially impacted Indigenous communities and identify, consider, and address Indigenous rights and related nature-related impacts and dependencies that are relevant to the corporation, its strategies, operations, and projects in order to fulfil their statutory and common law duties as directors to promote the success of the company and act towards the best interests of the corporation. Failing to address these considerations is likely to result in economic and reputational harm to the corporation.**

75. Directors should therefore ensure that: (i) strategies and frameworks exist to engage with impacted Indigenous rightsholders and communities in a respectful and collaborative manner; (ii) projects impacting Indigenous rightsholders and communities and their lands should incorporate traditional knowledge, address environmental and biodiversity concerns, and support local benefits; and (iii) the corporation actively engages with Indigenous rightsholders and communities in the directors' oversight of nature-related risks, and environmental and operational strategies in order to address these nature-related dependencies and impacts.

3.5. Investor Expectations

76. Investor expectations present an increasing nature-related transition risk for many corporations with nature-related dependencies and impacts. Investors globally are increasingly concerned about nature-related risks on their investments. In 2022, 74% of Canadian individual investors were reportedly concerned about biodiversity loss, and 68% highlighted the importance for the companies in their portfolio to commit to preventing biodiversity loss.[145]

77. With respect to institutional investors, 47% of respondents to a 2024 survey (representing asset owners and managers totalling over 4.5 trillion CAD in assets under management) cited biodiversity as a top three ESG issue, and 63% said they were integrating nature-related considerations into

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[142] In 2021, the Conseil des Innu de Ekuanitshit and the Municipality of Minganie both adopted resolutions asserting legal personhood for the Magpie River. Nine rights have been established for the Magpie River, including the right to live, exist, and flow; the right to be preserved and protected; and the right to take legal action, such as to safeguard the river from potential industrial projects.

[143] Assembly of First Nations Québec-Labrador, Resolution N. 04-2023, "Alliance for the Defence of the St. Lawrence River", (April 19, 2023).

[144] We note that Bill C-271, (First Reading) *An Act to give legal capacity to the St. Lawrence River and to provide for measures respecting its protection*, which died on the order paper when Parliament was dissolved for the April 28, 2025 election. As such, it would need to be reintroduced in a future session to proceed.

[145] Responsible Investment Association, Canada, RIA Investor Opinion Survey, (2022).

investment decision-making processes.[146] Similarly, a recent IFRS staff paper as part of the ISSB's biodiversity, ecosystems and ecosystem services ("**BEES**") project found that "*most investors are interested in information about BEES-related risks and opportunities for various reasons including risk and return assessments, asset owner mandates and regulatory compliance*."[147]

78. By way of example, in 2021, the Canada Pension Plan Investment Board's ("**CPPIB**") report on sustainable investing mentions biodiversity as one of a confluence of factors redefining ESG risks and opportunities.[148] The 2023 report references the CPPIB's updates to its proxy voting principles and guidelines,[149] which now also include the consideration of nature and its potential impact on a company's long-term performance.[150] In particular, the 2023 report highlights that while climate and nature intersect, the CPPIB sees the difference between them "*as significant enough to warrant a specific reference to nature in the list of factors we call out as examples for boards to anticipate, manage and integrate into their strategy to create and preserve value over the long term*."[151] The CPPIB further noted that:

> *"There is an emerging need to understand the business'* ***dependency on natural systems through specific commodities or operating locations, to seek to determine whether that dependency is material and sustainable for the company or not, and understand any economic implications. Where the dependency is found to be material and unsustainable, boards should consider how to adjust their operations to create a more sustainable dependency or work with their supply chain to do the same***."[152] (emphasis added)

79. Similar to the CPPIB, the Institutional Shareholder Services' ("**ISS**") 2025 policy update to proxy voting guidelines for U.S., Canada, and Americas Regional now includes a general recommendation to *"[v]ote case-by-case on requests for reports on policies and/or the potential (community) social and/or environmental impact of company operations*" in relation to its new "*Natural Capital- Related and/or Community Impact Assessment Proposals*" policy, and notes that:

> "*In recent years, there has been an increased number of shareholder proposals focused on biodiversity and other connected environmental topics such as deforestation and water pollution. Biodiversity and related environmental topics are now commonly grouped under the theme of natural capital which has become a more frequent topic for some investors to consider, as* ***biodiversity and ecosystem loss may create societal risks and negative economic and business risks***." (emphasis added)

80. The position of the CPPIB and ISS reflects a global trend of investor pledges, frameworks and benchmarks, such as the *Finance for Biodiversity Pledge* (representing over EUR 3 trillion in assets),[153] Nature Action 100+,[154] and the Principles for Responsible Investment (a network of over

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[146] Millani, Semi-Annual ESG Sentiment Study of Canadian Institutional Investors (February 2024), p. 3.
[147] IFRS, "Sustainability Standards Advisory Forum, May 2025, Agenda Paper 4", (April 2025).
[148] CPP Investments, Report on Sustainable Investing (2021).
[149] CPPIB, Proxy Voting Principles and Guidelines (February 2023).
[150] CPPIB, 2023 Report on Sustainable Investing (2023), p. 6.
[151] *Ibid*., p. 14.
[152] *Ibid*.
[153] Finance for Biodiversity Foundation, Finance for Biodiversity Pledge (December 2022).
[154] Nature Action 100, At COP15, investors announce Nature Action 100 to tackle nature loss and biodiversity decline, (11 December 2022).

3,000 institutional investors that has indicated biodiversity as a priority),[155] demonstrating a growing expectation from the world's largest investors that corporations will identify, asses, and manage NRR.

[155] Principles for Responsible Investment, Investor Action on Biodiversity (September 2020).

4. FORESEEABILITY OF NATURE-RELATED RISKS

81. The Supreme Court of Canada ("**SCC**") has determined that a harm is reasonably foreseeable if it is not just probable but that there is a "*real risk*" that it would occur to the mind of a reasonable person and which they "*would not brush aside as far-fetched*".[156] The last five years have seen many calls to action for business to assess and respond to NRR, supporting the assessment of the foreseeability of these risks to Canadian corporations within the context of emerging nature-related risks to corporations globally and in Canada as set out in Section 3.

82. The foreseeability and potential materiality of NRR and their relevance to directors' duties has also been confirmed by leading legal practitioners in other countries of the Commonwealth:

    a. In New Zealand, a March 2023 legal opinion was authored by the country's largest commercial law firm. It concluded that, under New Zealand law, company directors have a duty to ensure that their businesses are identifying foreseeable and material nature-related risks and to take such risks into account in decision making.[157]

    b. In Australia, an October 2023 independent legal opinion was authored by a senior commercial litigation barrister and a senior environmental law solicitor. It found that nature-related risks to a company should be regarded as foreseeable now, given the large amount of information already available about economic dependency on nature and the rate at which it is being degraded in Australia and globally. It concluded that nature-related risks are within the scope of directors' duties to act with care and diligence under Australian corporate law. The authors recommended that directors of Australian companies should identify their company's dependencies and impacts on nature and consider potential risks they pose to the company. Failure on the part of a director to identify, manage and disclose material nature-related risks may lead to increased shareholder pressure and even litigation against directors.[158]

    c. In the UK, a March 2024 independent legal opinion was authored by senior corporate and financial law barristers. They opined that: (i) nature-related risks fall within the category of risks to which directors ought to have regard when discharging their duties under the *UK Companies Act*; (ii) it would be prudent for directors to identify the nature-related risks facing their company; assess which of those risks are relevant and non-trivial; take expert advice where appropriate; decide in good faith whether a course of action is appropriate to mitigate those risks and take such steps accordingly; and record their decision making process in writing; and (iii) directors who fail to give consideration to relevant non-trivial nature-related risks and take appropriate steps to mitigate them, may be exposed to claims that they have acted in breach of their duties.[159]

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[156] *Mustapha v Culligan of Canada Ltd.*, 2008 SCC 27 at para 13; citing *Overseas Tankship (U.K.) Ltd. v Miller Steamship Propriety Ltd*. (1966), [1967] 1 A.C. 617 (New South Wales PC), at p. 643.

[157] Chapman Tripp, instructed by The Aotearoa Circle: New Zealand Director Duties To Manage Nature-Related Risk And Impact On Natural Capital (March 2023).

[158] Davis, S.H., & Bush, Z, instructed by Pollination and the CCLI, Nature-related risks and directors' duties (October 2023).

[159] Sharif Shivji KC, Rebecca Stubbs KC, James Burton, Karl Anderson and Hossein Sharafi, Nature-related risks and directors' duties under the law of England and Wales, (March 2024).

83. Commensurate with these opinions and the context set out in Section 3, it is our opinion that NRR, arising from both nature-related dependencies and nature-related impacts, are not far-fetched but are real risks that are known, well-documented and reasonably foreseeable at this time in Canada. The very existence of the GBF and the TNFD Recommendations, the latter of which have been adopted by hundreds of corporations, supports the conclusion that NRR are foreseeable, and provide express and detailed frameworks for, at a minimum, assessing NRR and nature-related opportunities that arise from the nature-related dependencies and impacts of Canadian corporations, and to determine whether they are material and appropriately the subject of nature-related corporate disclosures as discussed below in Section 7.

5. FIDUCIARY DUTY AND THE DUTY OF CARE

84. Section 122(1) of the CBCA sets out the fiduciary duty and duty of care of corporate directors. The analogous provisions of provincial and territorial legislation are consistent with the provisions of the CBCA and are set out in Appendix A. We have therefore focused our analysis of these statutory duties on the CBCA and related jurisprudence.

85. Under Canadian corporate law, directors have the duty to: (i) act honestly, in good faith, with a view to the best interests of the corporation ("**fiduciary duty**" / "**duty of loyalty**"); and (ii) exercise the care, diligence, and skill that a reasonably prudent person would use in similar circumstances ("**duty of care**"), which includes the primary role of directors to manage and supervise the management of the business and affairs of the corporation.[160] The fiduciary duty is subjective, in that the subjective motivation of the director is the central focus of the duty; whereas, the duty of care is an objective standard, where the context and factual circumstances surrounding the actions of the director are important in determining whether the duty has been discharged.[161]

86. Directors are not held to a standard of perfection in their decisions and in discharging their fiduciary duty and duty of care. They are protected by the "business judgment rule", outlined below in Section 5.3, which generally protects a director's discretion and decisions if they have engaged in informed and reasoned analysis based on the information reasonably available to them at the time and in the context of the decision.[162]

87. In the event a director's actions and decisions related to NRR and their actions to discharge their duties are not justified by evidence that the director made an informed decision, through a rational assessment process, within their authority, then the director may be found to have breached one or more of their duties, and subject to the applicable claims and actions set out in Section 5.4.

88. We have considered these duties in the context of for-profit Canadian corporations and note that additional duties may apply to investor fiduciaries, including pension funds and other institutional investors.[163]

5.1. Fiduciary Duty

89. Section 122(1)(a) of the CBCA, sets out a director's fiduciary duty and stipulates that every director of a Canadian corporation has the duty to "*act honestly and in good faith with a view to the best interests of the corporation*." Fiduciary duty analysis is subjective and the director's purpose and motivation in attempting to make decisions in the best interest of the corporation are the central focus of the duty.

90. In *Peoples*, the SCC confirmed that the fiduciary duty requires directors to act honestly and in good faith *vis-à-vis* the corporation.[164] They must: (i) respect the trust and confidence reposed in them to manage the assets of the corporation in pursuit of the realization of the objects of the corporation; (ii) avoid conflicts of interest with the corporation; (iii) avoid abusing their position to gain personal

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[160] CBCA, s. 102(1), *Peoples Department Stores Inc. (Trustee of) v Wise,* 2004 SCC 68 at para 31. ("***Peoples***").
[161] *Peoples* at para 63.
[162] *Ibid.*, at para 64.
[163] For example, see SN Gary, KL Johnson & NW Zuiker, "Investor Fiduciary Duties in the Crosshairs — Targeting a Mirage", (May 10, 2025).
[164] *Peoples*, at para 35

benefit; (iv) maintain the confidentiality of information they acquire by virtue of their position; and (v) serve the corporation selflessly, honestly and loyally.[165]

91. While the duty is expressly owed to the corporation, the director's considerations are not limited to the corporation. [166] In both *Peoples* [167] and *BCE Inc. v 1976 Debentureholders* ("***BCE***"),[168] the SCC confirmed that as part of discharging the fiduciary duty, a director may consider broader stakeholder interests, the environment, and the long-term interests of the corporation.

92. Section 122(1.1) of CBCA reflects the findings in *Peoples* and *BCE*. It stipulates that when directors are acting with a view to the best interests of the corporation under s. 122(1)(a), they may consider: (i) the interests of shareholders, employees, retirees and pensioners, creditors, consumers, and governments; (ii) the environment; and (iii) the long-term interests of the corporation.

93. In *Peoples*, the SCC affirmed that "[*f]rom an economic perspective, the 'best interests of the corporation' means the maximization of the value of the corporation*",[169] however, "*in determining whether they are acting with a view to the best interests of the corporation it may be legitimate, given all the circumstances of a given case, for the board of directors to consider, inter alia,* ***the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment***." [170] (emphasis added)

94. The 'value' of the corporation may require directors to **consider factors beyond shareholder profits**, particularly if a long-term perspective aligns with the corporation's goals, and balance various factors:

> "*The fiduciary duty of the directors to the corporation is a broad, contextual concept.* ***It is not confined to short-term profit or share value****. Where the corporation is an ongoing concern, it looks to the long-term interests of the corporation. The content of this duty varies with the situation at hand.* ***At a minimum, it requires the directors to ensure that the corporation meets its statutory obligations****.* ***But, depending on the context, there may also be other requirements****. In any event, the fiduciary duty owed by directors is mandatory; directors must look to what is in the best interests of the corporation*."[171] (emphasis added)

95. There is no stipulated hierarchy of interests that directors may consider in discharging their fiduciary duty:

> "*There is no principle that one set of interests — for example the interests of shareholders — should prevail over another set of interests. Everything depends on the particular*

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[165] *Ibid*.
[166] *CBCA*, s. 122(1.1).
[167] Peoples at para 42.
[168] *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, at paras 39-40.
[169] *Ibid*., at para 42; citing E. M. Iacobucci, "Directors' Duties in Insolvency: Clarifying What Is at Stake" (2003), 39 *Can. Bus. L.J*. 398, at pp. 400-401.
[170] *Ibid*., at para 42.
[171] *Ibid*., at para 38.

situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way."[172]

96. In *BCE*, the SCC confirmed that fiduciary duty may require consideration of stakeholder impacts and other interests and addressed the duty in the event of a conflict between such interests. The court noted, *"[o]ften the interests of shareholders and stakeholders are co-extensive with the interests of the corporation. But if they conflict, the directors' duty is clear — it is to the corporation*."[173]

97. This approach allows directors significant flexibility to weigh and balance diverse stakeholder concerns, recognizing that no single interest is determinative in assessing what is in a corporation's best and long-term interests. Directors are entrusted to exercise their business judgment responsibly and contextually, reinforcing their fiduciary duty to the corporation.[174]

98. The current and potentially material context of NRR outlined in Sections 3, 4 and 64, supports the view that NRR should be identified and considered by directors as part of their fiduciary duty to the corporation as it may fall within the environment, supply chains, customers, and the long-term interests of the corporation.

99. Nature, and implicitly NRR, fall squarely within "*the environment*" listed in s. 122(1.1)(b). Consider the example of a Canadian insurance company. It may be subject to direct and indirect physical NRR from extreme weather events associated with weather damaged property and unprecedented financial claims. It may also face nature-related transition risks resulting from proposed changes in government policy or regulation pertaining to mandated coverage or potential limits on products and premiums. It may also be exposed to systemic nature-related risks that are multifaceted, such as threats to pollinators, water resources and food systems (which are potentially cataclysmic for the agriculture insurance sector in the short term and the broader insurance sector in the longer term).

100. **Supply chains** may also be materially impacted by NRR arising from nature-related dependencies and nature-related impacts. Consider the example of a Canadian biomass-fuelled electricity company that has material supply contracts for wood-waste feedstock with forestry companies in Northern Canada. The wood-waste feedstock constitutes a *nature-related dependency*. The electricity company supply chain may be materially and negatively impacted if the suppliers' forestry activities are negatively impacted by a nature-related *force majeure* such as a devastating parasite (i.e., spruce bud worm) or a forest fire that destroys the forests giving rise to the wood-waste feedstock. The electricity company may also be subject to *nature-related impacts* if it sought

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[172] *Ibid.*, at para 84.
[173] *BCE*, at para 37.
[174] For example, in SN Gary, KL Johnson & NW Zuiker, "Investor Fiduciary Duties in the Crosshairs — Targeting a Mirage", (May 10, 2025), discussing investor fiduciary duties in the U.S. context, the authors state that the duty to investigate facts requires "*that investor fiduciaries investigate facts 'relevant' to investment and management decisions. This fact-finding obligation precludes fiduciaries from jumping to conclusions. The duty contemplates use of a reasonable, good faith process of inquiry to inform decisions. Scope of this inquiry can be broader than the corporate concept of 'materiality,' as it extends to determination of what could be material to each specific institutional investor. This duty to investigate is central to informed decision making and contemplates creation of documents that show the basis for fiduciary decisions*."

alternative biomass fuel supply by harvesting wood from a forested area that was subject to Aboriginal rights and title without the requisite consultation and consent.

101. Nature and NRR may also validly form part of the director's consideration of **consumers**. Consider the example of a Canadian construction company that serves mainly government customers and specializes in constructing government buildings and infrastructure projects. Canada has implemented a green procurement strategy requiring sustainable and lower carbon building materials (such as Forest Stewardship Council certified wood) and sustainable construction processes.[175] This imposed nature-related requirement constitutes a nature-related transition risk for the company. Access to the required sustainable building materials may constitute a nature-related dependency, which affects the construction company's ability to meet the procurement criteria and win competitive government bids. The construction company may also face nature-related impacts if any of its construction activities harm a species at risk, in a manner that is not permitted or excludes them from the government green procurement process requirements.

102. Similarly, nature and NRR may also constitute an integral part of the director's consideration of the **long-term interests of the corporation**. Consider the example of a Canadian auto parts manufacturer that manufactures and sells internal combustion engine parts to large EU-based automotive manufacturing customers. Consistent with the EU's Fit for 55 climate policy,[176] a number of the large EU car manufacturers like BMW have committed to 50% of their automobile sales being electric vehicles by 2030.[177] This will materially reduce their purchase of internal combustion engine parts, and harm the long-term interests of the Canadian auto parts manufacturer unless it identifies and adapts to this nature-related transition risk, which also constitutes a fundamental market risk.

103. In each of the examples above, the best interests of the corporation are well served by a director's consideration of these NRR that are integral to the environment, supply chains, consumers, and the long-term interests of the respective companies. It is difficult to contemplate how a director may act in the best interests of the corporation and discharge their duty to balance the interests of stakeholders, the environment, and the long-term interests of the corporation, if they have not even identified the corporation's NRR and assess whether any NRR are material to the corporation.

104. It is therefore our opinion that:

    a. the s. 122(1)(a) fiduciary duty, as elaborated upon by 122(1.1)(b) and (c) and Canadian jurisprudence, both **permits and may require companies and their corporate directors to, at a minimum, identify nature-related dependencies and impacts, and consider material NRR** in the context of the best interests of the company;

    b. the duty to consider and identify NRR as part of the fiduciary duty is particularly applicable to directors in sectors that are **known to be highly nature-dependent or have significant nature-related impacts** on stakeholders or the environment;

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[175] https://www.canada.ca/en/treasury-board-secretariat/services/innovation/greening-government/green-procurement.html For example, see Treasury Board of Canada Secretariat, "Green procurement".

[176] For an overview of the 'Fit for 55' legislative package see European Commission, "Commission welcomes completion of key 'Fit for 55' legislation, putting EU on track to exceed 2030 targets", (October 8, 2023).

[177] Green Car Reports, "BMW sticks to 50% EV target by 2030-not including hybrids, PHEVs", (May 16, 2024).

c. NRR may fall within the **specific stakeholder and other interests that directors may be required to consider** pursuant to s. 122(1.1) of the CBCA and related jurisprudence, given that nature and NRR are part of the environment, and NRR may materially impact corporate supply chains, customers, and the long-term interests of the corporation; and

d. the fiduciary duty does not require directors to elevate NRR above all other interests; however, it does require them to identify NRR and appropriately balance material NRR within the best interests of the corporation.

105. In the event that companies and their corporate directors do not, at a minimum, identify nature-related impacts and dependencies and consider material NRR in the context of the best interests of the corporation, they are more likely to be subject to claims related to breach of their fiduciary duty. In the absence of an informed and rational decision-making process related to NRR in accordance with the business judgment rule as set out in Section 5.3, directors are more likely to be found to have breached their fiduciary duty and be subject to the applicable claims and/or actions set out in Section 5.4. The success of any such claim will be highly contingent on the specific facts and circumstances surrounding the director's conduct and decisions and the applicability of the business judgment rule to same.

5.2. Duty of Care

106. Section 122(1)(b) of the CBCA, sets out the duty of care and stipulates that every director of a Canadian corporation has the duty to "*exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances*." The three core elements of the duty require directors to: (i) exercise care, diligence, and skill, (ii) to the standard that a reasonably prudent person would exercise, (iii) in comparable circumstances.

107. The director's duty to manage and oversee the activities of the corporation as set out in s. 102(1) of the CBCA[178] is also often viewed as implicit within, and reviewed in the context of, the duty of care.[179] While directors may delegate many functions,[180] their duty to ensure that their duty of care has been met for delegated functions remains their own pursuant to s. 122(1)(b) of the CBCA.

108. The duty of care holds directors to an objective standard, where the context and factual circumstances surrounding the actions of the director are important in determining whether the duty has been discharged.[181] The concept of "care, diligence, and skill" addresses both the competence of directors to supervise and manage the company's affairs, and the means and methods that they use to do so.

109. The duty of care under s. 122(1)(b) is an objective standard that requires directors to make reasonable business decisions by relying on available information, engaging relevant experts, and taking adequate time to fully understand the issues at hand.[182] Meeting this standard may require directors to make inquiries and seek further information and knowledge in order to gain a basic

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[178] S.102(1) of the CBCA provides: **102 (1)** Subject to any unanimous shareholder agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation.
[179] Hansell, C. for the Canada Climate Law Initiative, *Climate Change Risk on the Boardroom Table* (2022). ("**Hansell**")
[180] Section 115(3) of the CBCA sets out the director responsibilities that may not be delegated.
[181] *Peoples* at para 63.
[182] *Ibid.*, at para 68.

understanding of complex issues (such as biodiversity loss, water scarcity, ecosystem degradation, nature-related impacts, or compliance with evolving nature-related standards).

110. The duty of care imposes a standard of "*reasonableness*" on directors, not correctness or perfection. In *Peoples*, the SCC clarified that:

> "*Directors and officers will not be held to be in breach of the duty of care under s. 122(1)(b) of the CBCA* ***if they act prudently and on a reasonably informed basis****. The decisions they make must be reasonable business decisions in light of all the circumstances about which the directors or officers* ***knew or ought to have known.*** *In determining whether directors have acted in a manner that breached the duty of care, it is worth repeating that perfection is not demanded. Courts are ill-suited and should be reluctant to second-guess the application of business expertise to the considerations that are involved in corporate decision making, but they are capable, on the facts of any case, of determining* ***whether an appropriate degree of prudence and diligence was brought to bear*** *in reaching what is claimed to be a reasonable business decision at the time it was made*."[183] (emphasis added)

111. This duty has been interpreted to require directors to: (i) make appropriate inquiries to identify and assess risks, recognize that information provided to them was understated, incomplete, or misleading;[184] and (ii) identify significant risks, put appropriate risk management practices in place, and plan for the foreseeable worst-case scenario.[185]

112. The actions (or inaction) of directors relating to NRR will be assessed from the context of a reasonably prudent person in "*comparable circumstances*",[186] including the factual context and circumstances set out in Section 3, above. This does not introduce a subjective element to the objective standard of care:

> "*the enacted version includes the words "****in comparable circumstances****", which modifies the statutory standard by requiring the context in which a given decision was made to be taken into account. This is not the introduction of a subjective element relating to the competence of the director, but rather the introduction of a contextual element into the statutory standard of care*."[187] (emphasis added)

113. Unlike s. 122(1)(a), which expressly provides that the fiduciary duty is owed to the corporation, s. 122(1)(b) does not specify to whom the duty of care is owed. This opens the possibility that directors may owe a duty of care to stakeholders beyond the corporation. In the Canadian context, the entities to whom the duty of care may be owed may include corporate stakeholders and Indigenous rightsholders. In *Peoples*, the SCC acknowledged this open-endedness:

> "*the statement of the duty of care in s. 122(1)(b) of the CBCA does not specifically refer to an identifiable party as the beneficiary of the duty. Instead, it provides that "[e]very director and officer of a corporation in exercising his powers and discharging his duties shall ...*

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[183] *Ibid.,* at para 67.
[184] *Standard Trustco Ltd., Re*, 1992 CarswellOnt 140, 15 O.S.C.B. 4322, 6 B.L.R. (2d) 241.
[185] *Ibid*., at para 421, var'd on other grounds in *Green v Canadian Imperial Bank of Commerce*, 2014 ONCA 90, appeal ref'd *Canadian Imperial Bank of Commerce v Green*, 2015 SCC 60.
[186] Hansell, p.17
[187] *Peoples* at para 62.

exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances." ***Thus, the identity of the beneficiary of the duty of care is much more open-ended, and it appears obvious that it must include creditors***."[188] (emphasis added)

114. Similarly, entities that are both in the company's value chain and affected by the company's impacts on nature may also be potential stakeholders to whom the company owes a duty of care. In *BCE*, the SCC further clarified that this may extend potential liabilities for breach of the duty to other stakeholders:

> "*This [s. 122(1)(b)] duty, unlike the s. 122(1)(a) fiduciary duty, is not owed solely to the corporation, and thus* ***may be the basis for liability to other stakeholders in accordance with principles governing the law of tort and extracontractual liability***."[189] (emphasis added)

115. Corporate boards may delegate much of their oversight authority to management, but that delegation does not absolve individual directors from their broader duty of care. Directors "*retain responsibility for the business through their duty to oversee management's discharge of the authority delegated to it.*"[190]

116. In discharging the duty of care, directors are entitled to rely, in good faith, on management and their reports. However, they must be satisfied that they have the information they need to perform their oversight responsibilities. This includes ensuring that there are reporting systems in place that will allow them to monitor management performance and will alert them to new and arising issues that may require closer board scrutiny.[191]

117. In *R v Bata Industries Ltd.*,[192] the Ontario Court of Justice provided the following guidance in respect of the director's supervisory function in the context of the organization's compliance with "*environmental laws*", which capture a number of NRR:

a. The directors are responsible for reviewing the environmental compliance reports provided by the officers of the corporation, but are justified in placing reasonable reliance on reports provided to them by corporate officers, consultants, counsel or other informed parties.

b. The directors should substantiate that the officers are promptly addressing environmental concerns brought to their attention by government agencies or other concerned parties including shareholders.

c. The directors should be aware of the standards of their industry and other industries that deal with similar environmental pollutants or risks. Each director should immediately react when they have noticed the system has failed.[193]

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[188] *Ibid*., at para 57.
[189] *BCE* at para 44.
[190] CBCA, s. 122(1); Hansell, p. 11.
[191] Hansell, p. 12.
[192] *R v Bata Industries Ltd.,* 1992 CanLII 7721 (ON CJ).
[193] *Ibid*., at para 147.

118. This elaboration of the supervisory duties implicit in the duty of care is also applicable to NRR, where courts can reasonably be anticipated to expect diligent corporations to have: (i) risk management processes to, at a minimum, identify applicable nature-related dependencies and nature-related impacts; (ii) evaluate 'worst-case' scenario as part of an appropriate risk management strategy;[194] and (iii) anticipate and prepare for material events, including those that may not be imminent or frequently occurring (such as a once-in-a-century tsunami).

119. When applying these elements of the duty of care to a director's decisions relating to foreseeable and potentially material NRR, a reviewing court or regulator is likely to consider the corporate-endorsed TNFD Recommendations set out in Section 3.3.2, above and will consider the factors set out below.

a. the **context** of the extensive, readily available information on pressing and potentially material NRR that Canadian directors know, or reasonably ought to know, as set out in Section 3, above;

b. the **process** directors followed relating to NRR in order to be reasonably informed,[195] including:

i. **available information** and the basic understanding of the complex issues of NRR by directors; what NRR **inquiries** they made; whether they requested expert and external assistance in identification and assessment of the materiality of any nature-related dependencies of the corporation and nature-related impacts of the corporation; whether they sought training or director education on NRR; awareness and use of NRR guidance and frameworks such as TNFD, and sector-specific standards and guidance relevant to the corporation and the sector in which it operates; [196]

ii. the **methods and processes** in place that they followed, including the risk management and reporting systems that the corporation has in place to alert directors to new and arising NRR that require board certainty and oversee management's identification and approach to material NRR. This may include establishing a management and governance oversight system to address NRR, integrating NRR into enterprise risk management systems ("**ERM**") and regular ERM reporting, scenario analysis of worst-case, "once-in-a-century" events,

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[194] For example, see *Green v Canadian Imperial Bank of Commerce*, 2012 ONSC 3637, at para 421, where the court remarked on CIBC's failure to disclose its concentrated credit risk: *"This raises the question of why this risk was not anticipated when CIBC acquired its subprime portfolio and why appropriate risk management strategies – including appropriate hedges — were not put in place at that time. It also raises the question of whether appropriate risk management strategies should have addressed the challenges of valuation and disclosure that would be encountered during the "worst case" scenario. (…). Even once-in-a-century tsunamis can be anticipated. The degree of damage they can inflict make it all the more critical to anticipate and prepare for them. Had CIBC anticipated the tail risk, it could have prepared itself to the respond to the issues it would face in the heat of the crisis*."

[195] See the TNFD's recently released guide, "Asking Better Questions on Nature", (May 2025), providing guidance to "*help senior executives across business and finance surface critical insights about nature-related dependencies, impacts, risks and opportunities to inform their decision making.*" The guidance includes 12 key questions for directors to ask executives and consider in board meetings, as well as the analysis boards should expect to support such discussions to "*ensure that nature-related issues are being appropriately incorporated into the company's governance, strategy, risk management and capital allocation decision making.*"

[196] Such as TNFD sectoral guidance and the guidance provided by International Council on Mining and Metals.

retaining external experts to identify and assess the materiality of NRR, and considering strategies to mitigate material NRR;

iii. the identification of nature-related dependencies related to, and impacts on, relevant **stakeholders** and interests, including **Indigenous rightsholders**, investors, suppliers, customers, and the environment;

c. the **comparable circumstances** of Canadian corporations, particularly the NRR processes and actions of corporations that are highly or moderately nature dependent, or have a significant impact on the environment (including forestry, manufacturing, financial services, insurance, mining, agriculture, real estate, energy, and retail and fashion); and

d. the **actions** the directors and board have taken to**:**

i. **balance and manage material NRR** that have been identified by the corporation, including what the director has done to promptly address material NRR brought to their attention by management, external experts, governments, regulators, or other concerned stakeholders, including investors and Indigenous rightsholders; and

ii. promptly react when they have noticed that the established governance or oversight systems of the corporation and/or board to oversee NRR has failed.

120. The reasonableness and prudence of director actions related to nature-related dependencies and impacts on nature will be evaluated in the known and foreseeable context of NRR outlined in Section 3. Directors should know about the general class of NRR, related international instruments (CBD and GBF), the TNFD Recommendations, international and Canadian policy initiatives related to NRR, and the various business reports and calls to action related to the materiality of NRR.

121. While the determination of whether the directors have discharged their duty of care related to NRR will be fact-specific for the directors' decisions and company in question, it is our general opinion that simply ignoring the class of wide reaching and potentially material NRR does not constitute acting on an informed basis, and is not reasonable, prudent, or diligent in the current context and circumstances. A reasonably prudent director must know, or ought to know, that NRR are foreseeable and may constitute a potentially material class of risk for Canadian corporations, particularly those that are highly nature dependent or have significant impacts on nature.

122. It is our opinion that the duty of care requires directors to, at minimum, take reasonable and prudent action to:

a. be **informed, and have sufficient knowledge, of the class of NRR** that may apply to the corporation (this may require making specific inquiries, seeking director education, or external expert advice);

b. have a **governance oversight and risk management process** in place to identify the corporation's nature-related dependencies and impacts on nature, and assess the materiality of identified NRR as they would any other significant strategic or operational risk, especially in nature-dependent sectors, including mining, agriculture, energy, forestry, insurance, and retail;

c. **consider current and longer-term NRR** that may take the form of physical, transition, legal, or systemic NRR; and

d. **balance and manage material nature-related dependencies and material impacts on nature** in the context of the entities to which a duty of care may be owed, including, without limitation, impacted Indigenous rightsholders.

123. In the event that directors do not: have sufficient knowledge of NRR; at a minimum have a governance and oversight process to identify and assess the materiality of the corporation's nature-related dependencies and impacts on nature; and balance and manage material NRR in the context of the entities to which a duty of care may be owed; they may be in breach of their duty of care. The reasonableness of director decisions falling within the duty of care related to NRR will be assessed in the context of the business judgment rule as set out in Section 5.3. A breach of the duty of care related to the failure to identify and address material NRR does not in and of itself give rise to a right of action under s. 122(1)(b) of the CBCA, but may give rise to applicable tort claims and derivative actions set out in Section 5.4. The success of any such claim will be highly contingent on the reasonableness of the director's conduct and decisions in the circumstances, and the applicability of the business judgment rule.

5.3. 'Business Judgment Rule' Protection

124. The business judgment rule is a fundamental principle of Canadian corporate law that shields directors from personal liability when they make decisions in good faith, with reasonable diligence, and within their authority — even if those decisions ultimately result in negative outcomes. The rule acknowledges that directors possess unique business expertise, placing them in a better position than courts to evaluate business risks and opportunities. Courts therefore defer to directors' judgment, provided directors acted prudently, informed themselves adequately, and avoided conflicts of interest.[197]

125. Absent a conflict of interest, courts defer to directors' business judgment if the decision "*lies within a range of reasonable alternatives*."[198] This principle was succinctly articulated by Weiler J.A. in *Maple Leaf Foods Inc. v Schneider Corp*, who explained the judicial role in assessing the business judgment rule as follows:

> "[…] *the court must be satisfied that the directors have acted **reasonably and fairly**. The court looks to see that the directors made **a reasonable decision not a perfect decision**. Provided the **decision taken is within a range of reasonableness**, the court ought not to substitute its opinion for that of the board even though subsequent events may have cast doubt on the board's determination. As long as the directors have **selected one of several reasonable alternatives**, deference is accorded to the board's decision. This formulation of deference to the decision of the Board is known as the 'business judgment rule'*."[199] (emphasis added)

126. Courts have held that while they will not subject the board's decisions to a microscopic examination, they will nevertheless examine their decisions. A court will consider the context of directors'

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[197] *Maple Leaf Foods Inc. v Schneider Corp.*, 1998 CanLII 5121 (ON CA). ("***Maple Leaf Foods***")
[198] *BCE* at para 40.
[199] *Ibid*., p. 192.

decisions and the extent of the information on which they were based, and measure these against the facts as they existed at the time. If a decision cannot be attributed to a rational business purpose, if directors have made an unintelligent or unadvised judgment, or if they have otherwise been unduly passive, the courts will not defer to the judgment of the directors. Boards must engage in a reasoned analysis before making decisions.[200]

127. In *Peoples*, the SCC noted that "[*t]he establishment of good corporate governance rules should be a shield that protects directors from allegations that they have breached their duty of care. However, even with good corporate governance rules, directors' decisions can still be open to criticism from outsiders*."[201] The Court acknowledged that:

> "*Many decisions made in the course of business, although ultimately unsuccessful, are reasonable and defensible at the time they are made. Business decisions must sometimes be made, with high stakes and under considerable time pressure, in circumstances in which detailed information is not available. It might be tempting for some to see unsuccessful business decisions as unreasonable or imprudent in light of information that becomes available ex post facto. Because of this risk of hindsight bias, Canadian courts have developed a rule of deference to business decisions called the 'business judgment rule'*".[202]

128. In *BCE,* the SCC noted that directors may rely on the business judgment rule when discharging the fiduciary duty and acting with a view to the best interests of the corporation:

> "*In considering what is in the best interests of the corporation, directors may look to the interests of, inter alia, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions. Courts should give appropriate deference to the business judgment of directors who take into account these ancillary interests, as reflected by the business judgment rule. […] It reflects the reality that directors, who are mandated under s. 102(1) of the CBCA to manage the corporation's business and affairs, are often better suited to determine what is in the best interests of the corporation. This applies to decisions on stakeholders' interests, as much as other directorial decisions*."[203]

129. Similarly, directors may rely on the business judgment rule when acting in accordance with the duty of care:

> "*In determining whether directors have acted in a manner that breached the duty of care, it is worth repeating that perfection is not demanded. Courts are ill-suited and should be reluctant to second-guess the application of business expertise to the considerations that are involved in corporate decision making, but they are capable, on the facts of any case, of determining whether an* ***appropriate degree of prudence and diligence was brought***

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[200] See *Maple Leaf Foods* where Weiler J.A. noted that: "*The mandate of the directors is to manage the company according to their best judgment; that judgment must be an informed judgment; it must have a reasonable basis. If there are no reasonable grounds to support an assertion by the directors that they have acted in the best interests of the company, a court will be justified in finding that the directors acted for an improper purpose.*"

[201] *Peoples* at para 64.

[202] *Ibid*.

[203] *BCE* at para 40.

to bear in reaching what is claimed to be a reasonable business decision at the time it was made."[204] (emphasis added)

130. The business judgment rule will typically protect directors who can demonstrate that they undertook and engaged in an informed decision-making process, and a rational assessment of reasonable alternatives at the time that the decision was made. A court that assesses a director's management of NRR under each of their fiduciary duty or their duty of care will look to whether the director acted with a view to the best interests of the corporation (fiduciary duty) and exercised appropriate care, diligence, and prudence (duty of care) relating to the NRR. This assessment is likely to include an examination of, among other things, the director's knowledge of NRR at the time, and their diligence and processes in and around the decision affected by NRR.

131. If a director has general knowledge of NRR, makes inquiries directly or through external experts, and the company has a process to identify, assess and manage material NRR, the director(s) are more likely to benefit from the business judgment rule. They will have a much greater likelihood of being able to demonstrate that they exercised the appropriate degree of prudence and diligence in reaching what they claim to be a reasonable business decision at the time it was made, even if hindsight later shows the director's decision to have been in error. A reviewing court or regulator is likely to defer to the director's decision and reflect the view that the director is better positioned to assess complex nature-related dependencies, impacts and associated physical, transition (including legal), and systemic risks.

132. It is our opinion that, **if directors are unduly passive toward NRR, do not engage in a reasoned process to identify and analyze NRR, and have no governance process to oversee the corporation's material nature-related dependencies and impacts on nature, they are very unlikely to be able to demonstrate that they exercised the appropriate degree of prudence and diligence in reaching related business decisions at this time, and thereby benefit from the business judgment rule**.

133. The plethora of current information, instruments, warnings and policy on NRR, and the potential for NRR to be a material risk for a corporation, supports the conclusion that it is reasonable and prudent for corporations to have a process to identify and assess the materiality of its NRR at this time. The TNFD Recommendations also provide a clear framework and structure for businesses to do so. Absent such a process to identify NRR, directors are more likely to be exposed to NRR-related stakeholder claims and potential liabilities for decisions that breach their statutory duties, which are not protected by the business judgment rule.

5.4. Impact of Breach of the Fiduciary Duty or the Duty of Care

134. A number of corporations are currently facing significant financial losses and reputational impacts due to nature-related dependencies and their impacts on nature. In 2020, both BP and Shell undertook multi-billion dollar write downs of their asset base, citing the COVID-19 virus and climate change, which constitutes an NRR.[205] Many energy companies have experienced asset

[204] *Peoples* at para 67.
[205] N Kusnetz, "BP and Shell Write-Off Billions in Assets, Citing Covid-19 and Climate Change", (July 2, 2020), *Inside Climate News*.

impairment, write downs and valuation challenges due to NRR and more are likely to do so.[206] Other companies have experienced losses due to their *impacts on nature*. In *Luciano Lliuya v RWE* ("***Lliuya***"),[207] a Peruvian farmer was recently partially successful in a claim against the German energy company, RWE, for the impact of RWE's coal-fired power emissions on the atmosphere, resulting in climate change and increased flooding.[208]

135. In *Lliuya,* the plaintiff relied upon attribution science to bring an accessorial claim against RWE. The plaintiff alleged that RWE's actions (longstanding GHG emissions) or omissions that impact ecosystem services (climate), contributed to the harm suffered by users of such ecosystem services (farmers' damages resulting from a changing climate).[209] We anticipate a number of similar claims related to biodiversity loss. For example, a large agricultural company that has engaged in wide-scale use of pesticides that have been shown to bioaccumulate in plants and become toxic to pollinators, can reasonably be anticipated to face claims from local flower and honey producers that have been harmed given their nature-dependency on the pollinators impacted by the agricultural company.

136. Stakeholders of Canadian companies seeking redress for such losses and harms are reasonably anticipated to be creative in structuring claims and actions to seek recovery, and may bring claims against the directors of the affected corporation alleging that the directors breached their fiduciary duty and/or duty of care.[210] In this section we itemize certain claims that director's may face resulting from an alleged breach of their statutory duties associated with NRR.

137. Generally, a director's breach of fiduciary duty may give rise to both statutory and common law claims and potential remedies in law and equity. However, a breach of the duty of care is not an independent foundation for legal action. The duty of care is relevant to the assessment of the "*standard of behaviour that should reasonably be expected*" of a director and is therefore most likely to come into play where a board (or individual director) is sued in tort (including negligence) or under the CBCA oppression remedy.

138. **Breach of Fiduciary Duty.** Claims alleging a director's breach of fiduciary duty related to the corporation's nature-related dependencies, impacts on nature, or management of NRR, may be

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[206] See Hafez A, Angwin D, Ben Othman H and Owusu FB, "Transitioning to net Zero: Assessing the impacts on asset impairment, write-downs and the going concern of oil and gas companies operating in the UK", (July 2025), 92 *Global Environmental Change*.

[207] *Luciano Lliuya v RWE*, Case number 5 U 15/17 OLG Hamm, 28 May 2025.

[208] The court was asked to consider: (i) whether there was a real and imminent risk of damage to Mr. Lliuya's property from flood waters based on nuisance related grounds, and, if so, (ii) whether RWE could be linked to that risk and liable to compensate Mr. Lliuya. The plaintiff was unsuccessful on the first issue, but the court found that, were there to be relevant and imminent impairment to a property like the plaintiff's, a single emitter in Germany could in principle be obliged to pay for preventative measures according to its share of emissions.

[209] See *Lliuya v RWE*, Case No. 2 O 285/15 Essen Regional Court (2015), where a Peruvian farmer filed claims for declaratory judgment and damages in the District Court Essen, Germany against Germany's largest electricity producer, RWE, for knowingly contributing to climate change by emitting significant amounts of GHGs and which is alleged to have contributed to melting of mountain glaciers in Peru. We note that the May 28, 2025, decision dismissed the plaintiff's appeal while holding that major emitters can be held liable for their emissions under German civil law for the consequences of climate change.

[210] For example, see *ClientEarth v Shell Plc*, [2023] EWHC 1897 (Ch), where environmental law organization ClientEarth filed an unsuccessful derivative action, brought by shareholders on behalf of the company, seeking permission to bring a claim against Shell's board of directors (the Board), alleging breaches of legal duties under the UK's *Companies Act 2006*. See also, Resilient LLP, "UK High Court Dismisses Shareholder Climate Lawsuit Against Shell's Board of Directors", (May 16, 2023).

brought by impacted and activist stakeholders and may follow the pattern that has developed for climate-related claims.[211] While the director's fiduciary duty is clearly owed to the corporation, it is feasible that any of the stakeholders itemized in s. 122(1.1) of the CBCA (including minority shareholders) may allege a breach of fiduciary for failure to consider and address material NRR, and seek recovery through legal or equitable remedies. Claims related to a director's breach of fiduciary duty often arise in relation to an alleged conflict of interest of the director.[212] Such claims against directors may include:

a. derivative actions brought by a shareholder, the holder of a debt obligation, a creditor, or another person acting on behalf of the corporation pursuant to s. 239(1) of the CBCA; and

b. oppression actions alleging that the corporation's failure to consider NRR or the director's exercise of their powers relating to NRR is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, any security holder, creditor, director or officer pursuant to s. 241(2) of the CBCA.[213]

139. The success of any such claims for breach of fiduciary duty related to NRR will be highly dependent on the facts and circumstances of the corporation and the reasonableness of the director's decision-making and processes in the context and time of the impugned action or decision.

140. **Breach of Duty of Care**. The duty of care is not itself a source of claims against directors, but will be considered in claims brought under s. 241 of the CBCA (oppression claims), as well as in tort claims brought by third parties (negligence, and possibly nuisance). Unlike s. 122(1)(a), s. 122(1)(b) does not provide an independent legal action. Directors' acts or omissions relating to an alleged breach of the duty of care related to NRR will be assessed on the objective "*standard of behaviour that should reasonably be expected*" of a director and whether the director "*exercise[d] the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.*" [214]

141. Duties to other stakeholders, and Indigenous rightsholders, may also give rise to claims, especially when corporate activities impact nature and intersect with Indigenous lands, resources, and communities. Specifically, NRR-related claims against directors may arise when related decisions contravene Indigenous rights and title and/or a delegated duty to consult and accommodate Indigenous rightsholders. The failure to engage Indigenous rightsholders and integrate Indigenous ecological knowledge may result in economic, legal, and reputational harm, and is likely to be considered as part of any assessment of a breach of the duty of care when Indigenous rightsholders are adversely impacted.

142. In the event that the business judgment rule does not shield the director's acts or omissions relating to NRR and results in a breach of the duty of care, the director may be subject to a number of claims and potential liabilities, including, without limitation:

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[211] See Setzer J and Higham C (2024) *Global Trends in Climate Change Litigation: 2024 Snapshot.* London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

[212] See for example *BCE*.

[213] See *Wilson v Alharayeri*, 2017 SCC 39, where the SCC affirmed that directors may be personally liable under the oppression remedy as a result of their action or inaction.

[214] *BCE* at para 44.

a. derivative actions brought by a shareholder, the holder of a debt obligation, a creditor, or another person acting on behalf of the corporation pursuant to s. 239(1) of the CBCA;

b. oppression actions alleging that the corporations' decisions relating to NRR were oppressive or unfairly prejudicial to, or unfairly disregarded the interests of, any security holder, creditor, director or officer pursuant to s. 241(1) of the CBCA;

c. in the event that the breach of the duty of care leads to a breach of disclosure obligations, disclosure-related complaints and claims as set out in Section 7;

d. direct tort claims in negligence or potentially nuisance (if the director's breach of the duty of care is the cause of imminent harm to a stakeholder);[215] and

e. failure to perform any delegated duty to consult and accommodate Indigenous rightsholders.

143. The nature-related *impacts* of the company may also give rise to a larger number of accessorial claims given that the duty of care "*may be the basis for liability to other stakeholders in accordance with principles governing the law of tort and extracontractual liability*."[216] This threat is augmented with nature-related claims.

144. Failure to identify and consider NRR may also subject the corporation and directors to potential claims and liabilities relating to the company's approach to risk management. For example, the Ontario Securities Commission ("**OSC**") considered a company's risk management practices in determining whether individual company directors acted contrary to the public interest and in a manner that was abusive to the capital markets. The OSC found that certain individual directors did not make the appropriate inquiries and did not do all that they ought to have done in relation to the risk. Specifically, the OSC found that the directors should have been aware of the increased risk and should have recognized that information provided to them was understated or incomplete and inconsistent with certain of the company's risk management policies**.**[217] The OSC found that the company and one of the directors acted contrary to the public interest by issuing, or authorizing or permitting the issuance of, a materially misleading statement and that all of the directors failed to "*exercise the diligence they ought to have exercised to be satisfied*" the information was not misleading and that such conduct was abusive of the capital markets.[218]

145. A related breach pertaining to diligent risk management has also led the courts to consider the potential breach of disclosure obligations resulting from such breach. In *Green v Canadian Imperial Bank of Commerce,*[219] the Ontario Superior Court was critical of the company's failure to identify the risk and plan for the foreseeable 'worst case scenario' finding that:

> "*The evidence suggests that the Canadian Imperial Bank of Commerce ("**CIBC**") was left struggling to respond to these challenges as the tidal wave of the subprime crisis was breaking on the beaches. Even once-in-a-century tsunamis can be anticipated. The degree*

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[215] See *Luciano Lliuya v RWE* Case number 5 U 15/17 OLG Hamm.
[216] *BCE*, at para 44.
[217] *Standard Trustco Ltd., Re*, 1992 CarswellOnt 140, 15 O.S.C.B. 4322, 6 B.L.R. (2d) 241.
[218] *Ibid*.
[219] *Green v Canadian Imperial Bank of Commerce*, 2012 ONSC 3637.

of damage they can inflict make it all the more critical to anticipate and prepare for them. Had CIBC anticipated the tail risk, it could have prepared itself to respond to the issues it would face in the heat of the crisis."[220]

146. Ultimately, the court dismissed the action as time-barred; however, the court noted that it "*would have granted leave to pursue the statutory cause of action, and would have certified this action as a class proceeding for that purpose*."[221]

147. It is our opinion that, while the business judgment rule is likely to provide directors with significant discretion for their decisions related to known nature-related dependencies of the corporation and the corporation's impacts on nature, the jurisprudence indicates that such discretion is unlikely to be afforded if the directors did nothing to inquire about and identify NRR that may have a potentially material impact on the corporation. Further, if the directors were aware of potentially material NRR to the corporation and did not plan or take action to diligently manage or balance such material NRR, then potential tort claims or derivative actions against the directors are more likely to be successful. The likelihood of success of an NRR claim against a director is likely to be exacerbated if the director is in any way subject to a conflict of interest from their other business or personal interests.

148. In our view, regulators and courts are much more likely to determine that a director has acted prudently if they identify and assess NRR and take action and make decisions to balance and manage material NRR that could reasonably affect the corporation's ongoing financial health, operations, or regulatory obligations. Directors may do this by conducting thorough evaluations of NRR, staying informed about emerging frameworks (e.g., TNFD Recommendations), and engaging relevant experts that are better positioned to independently make these determinations (and thereby assist in successfully defending against these direct, derivative and accessorial claims related to NRR).

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[220] *Ibid*., at para 421, var'd on other grounds in *Green v Canadian Imperial Bank of Commerce*, 2014 ONCA 90, appeal ref'd *Canadian Imperial Bank of Commerce v Green*, 2015 SCC 60. In addition, it points to the failure of the organization to put appropriate risk management strategies in place when it acquires a new line of business (in this case, a subprime portfolio).

[221] *Ibid*., at para 623.

6. MATERIALITY OF NATURE-RELATED RISKS

149. The determination of whether particular NRR are material to a Canadian corporation will be fact-specific to the corporation, assessed in accordance with the Canadian approach to the determination of materiality, and influenced by both the international and Canadian context. We have examined: (i) the Canadian jurisprudence and guidance on the assessment of materiality; and (ii) the current business facts and circumstances for Canadian corporations related to the materiality of NRR; and considered specific examples in order to opine on the potential materiality of NRR for Canadian corporations.

6.1. Canadian jurisprudence and guidance

150. In the Canadian context, the SCC has provided guidance to corporate directors in determining materiality. In *Sharbern Holding Inc. v Vancouver Airport Centre Ltd* ("***Sharbern***"),[222] the SCC adopted a US materiality standard,[223] which considers whether the information in question would be viewed by a reasonable investor as "*significantly altering the total mix of information made available*"[224] and provided the following structure to assess materiality in the context of corporate disclosures under Canadian law:

a. "*Materiality is a question of mixed law and fact, determined **objectively, from the perspective of a reasonable investor***";

b. "*An **omitted fact is material if there is a substantial likelihood that it would have been considered important by a reasonable investor in making his or her decision**, rather than if the fact merely might have been considered important. In other words, an omitted fact is material **if there is a substantial likelihood that its disclosure would have been viewed by the reasonable investor as having significantly altered the total mix of information made available***";

c. "*The **proof required is not that the material fact would have changed the decision, but that there was a substantial likelihood it would have assumed actual significance** in a reasonable investor's deliberations*";

d. **"*Materiality** involves the application of a legal standard to particular facts. It **is a fact-specific inquiry, to be determined on a case-by-case basis in light of all of the relevant considerations and from the surrounding circumstances** forming the total mix of information made available to investors*";

e. "*The materiality of a fact, statement or omission **must be proven through evidence by the party alleging materiality**, except in those cases where common sense inferences are sufficient. A court must first look at the disclosed information and the omitted information. A court may also consider contextual evidence which helps to explain, interpret, or place the omitted information in a broader factual setting, provided it is viewed in the context of the disclosed information. As well, evidence of concurrent or subsequent conduct or events that would shed light on potential or actual behaviour of persons in the*

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[222] Sharbern Holding Inc. v Vancouver Airport Centre Ltd, 2011 SCC 23.
[223] *TSC Industries, Inc. v Northway, Inc.*, 426 U.S. 438 (1976).
[224] *Sharbern*, at para 58.

same or similar situations is relevant to the materiality assessment. However, ***the predominant focus must be on a contextual consideration of what information was disclosed, and what facts or information were omitted from the disclosure documents*** *provided by the issuer*."[225]

151. The CSA also provides guidance on assessing materiality, confirming that information is material if its omission or misstatement would likely influence or change a reasonable investor's decision to buy, sell or hold an issuer's securities.[226] The CSA provides the following guiding principles to determine materiality, which are largely consistent with the test in *Sharbern*:

a. ***"No bright-line test*** *— There is no uniform quantitative threshold at which a particular type of information becomes material. The materiality of certain information may vary between industries and even between issuers within an industry according to their particular circumstances.*

b. ***Context*** *— Materiality depends on the nature and amount of the item judged in the particular circumstances of its omission or misstatement. Some facts are material on their own. When one or more facts do not appear to be material on their own, materiality must be considered in light of all the facts available*.

c. ***Timing*** *— Determining whether information is material is a dynamic process that depends on the prevailing relevant conditions at the time of reporting*.

d. ***Trends, demands, commitments, events and uncertainties*** *— Generally, the time horizon of a known trend, demand, commitment, event or uncertainty may be relevant to an issuer's assessment of materiality*.

e. ***Err on side of materiality*** *— If there is any doubt about whether particular information is material, issuers are encouraged to err on the side of materiality and disclose the information*."[227]

6.2. Current business facts and circumstances

152. Courts will assess whether an omission is material through a two-step process. First, the court will examine the information initially disclosed. Second, the court will evaluate the omitted or misstated information within the broader factual context, considering any contextual evidence which helps to explain, interpret, or place the omitted information in a broader factual setting, provided it is viewed in the context of the disclosed information.[228] [229]

153. The assessment of the materiality of any NRR to a Canadian corporation will therefore first involve an examination of what the corporation has disclosed (and implicit therein the identified or omitted nature-related dependencies and the corporation's impacts on nature). Second, a reviewing court will then consider the omitted or misstated NRR information in the broader context of, and plethora

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[225] *Sharbern* at para 60 (emphasis added).
[226] For example, see CSA Part 1(f) of Form 51-102F1 and Part 1(e) of Form 51-102F2.
[227] SN 51-333, pp. 7-8. (emphasis in original)
[228] *Ibid*., at para 59.
[229] See *Sharbern* at para 60.

of known information on, NRR set out in Section 3 of this opinion and the business circumstances of the corporation.

154. While the finding that NRR are capable of being material to certain corporations is implicit in the definition of NRR, there are a number of additional facts and circumstances applicable to Canadian corporations at this time that a reviewing court is likely to consider in assessing materiality. In addition to the contextual information set out in Section 3 these facts and circumstances include: (i) the frameworks for, and recommendations of, international business organizations on the materiality of NRR; and (ii) the impacts that corporations may be experiencing as a result of newly imposed tariffs on exported Canadian goods.

6.2.1. *International frameworks and recommendations*

155. The TNFD recommends a materiality approach that would result in disclosing information that is material for users of general-purpose financial reports ("**financial materiality**"); and additional disclosure of "*topics that represent its most significant impacts on the economy, environment and people, including impacts on their human rights*" ("**impact materiality**"). The TNFD notes that report preparers should use their jurisdiction's regulatory approach to materiality (which in the Canadian context is outlined in Section 6.1, above). Where such guidance is lacking, the TNFD suggests applying the ISSB's approach to identifying information that is material for users of general financial reports as a baseline.[230] The EU, through its Corporate Sustainability Reporting Directive ("**CSRD**"), also adopts an approach to materiality that includes impact materiality.

156. The ISSB's *IFRS S1 General Requirement for Disclosure of Sustainability-related Financial Information* ("**IFRS S1**") provides a widely consulted upon framework for assessing materiality for sustainability disclosures as follows:

> "*An entity shall disclose material information about the sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects.*"
>
> (…)
>
> "*In the context of sustainability-related financial disclosures, information is material if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that primary users of general purpose financial reports make on the basis of those reports, which include financial statements and sustainability-related financial disclosures and which provide information about a specific reporting entity.*"[231]

157. Similarly, the CSSB has published the finalized *Canadian Sustainability Disclosure Standard (CSDS) 1, General Requirements for Disclosure of Sustainability-related Financial Information* ("**CSDS 1**"), based on IFRS S1. CSDS 1, which provides that:

> "*Information about sustainability-related risks and opportunities is useful to primary users because an entity's ability to generate cash flows over the short, medium and long term is inextricably linked to the interactions between the entity and its stakeholders, society, the economy and the natural environment throughout the entity's value chain. Together, the*

[230] TNFD Recommendations.
[231] IFRS S1, paras 17-18.

entity and the resources and relationships throughout its value chain form an interdependent system in which the entity operates. ***The entity's dependencies on those resources and relationships and its impacts on those resources and relationships give rise to sustainability-related risks and opportunities for the entity***." [232] (emphasis added)

158. The *European Sustainability Reporting Standards*, promulgated under the CSRD, set out the inter-relatedness of financial and impact materiality and highlight that **the distinction may be an issue of timing, not necessarily degree**:

> "*A sustainability impact may be financially material from inception or become financially material, when it could reasonably be expected to affect the undertaking's financial position, financial performance, cash flows, its access to finance or cost of capital over the short-, medium- or long-term. Impacts are captured by the impact materiality perspective irrespective of whether or not they are financially material*."[233]

159. According to the WEF, nature-related risks may be material for businesses in the following three ways:

a. "*Dependency of business on nature: when businesses depend directly on nature for operations, supply chain performance, real estate asset values, physical security and business continuity.*"

b. "*Fallout of business impacts on nature: when the direct and indirect impacts of business activities on nature loss can trigger negative consequences, such as losing customers or entire markets, legal action and regulatory changes that affect financial performance.*"

c. "*Impacts of nature loss on society: when nature loss causes disruption to society and the markets within which businesses operate, which can manifest as both physical and market risks.*"[234]

160. The subtleties of this distinction between nature-related dependencies and nature-related impacts as it applies materiality assessments for both corporate and director duties and obligations may be best illustrated by examples:

a. financial institutions may also have **nature-related dependencies** such as loan portfolios concentrated in sectors that depend on nature (forestry, agribusiness, or hydropower), where a decline in water availability or an increase in regulatory restrictions on timber harvests or land use may elevate default risks;

b. the retail and fashion industry have nature-related dependencies on raw materials like cotton, wool, leather, and viscose, which all depend on ecosystem services such as fertile

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[232] CSSB, *Canadian Sustainability Disclosure Standard (CSDS) 1, General Requirements for Disclosure of Sustainability-related Financial Information*, (March 2024).

[233] European Commission, *Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regard sustainability reporting standards*, (22 December 2023), OJ L, 2023/2772, 22.12.2023.

[234] WEF, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy*, (January 2020), p. 8

soil, adequate water supply, and stable climatic conditions. The retail and fashion sector, particularly through its reliance on cotton, also has significant **impacts on nature**. For example, producing a single cotton T-shirt can require over 2,500 liters of water.[235] The cultivation of cotton, and other natural fibers, often involves high levels of pesticide and fertilizer use, which can degrade soil, pollute water bodies, and harm biodiversity;[236] and

c. agricultural corporations have **nature-related dependencies** related to the health of pollinator species and **impacts on nature** and biodiversity through the use of pesticides and herbicides.

6.2.2. Impacts of trade tariffs

161. The Canadian business context is currently characterized by a level of volatility and uncertainty that has not been encountered in many decades,[237] as recently noted by the Chair of the Canadian Securities Administrators ("**CSA**") and Chair and CEO of the Alberta Securities Commission: "[*i]n recent months, the global economic and geopolitical landscape has rapidly and significantly changed, resulting in increased uncertainty and rising competitiveness concerns for Canadian issuers*".[238]

162. The increasing political and economic instability from tariffs, shifts in global trade patterns and alliances, trade diversification and new alliances with jurisdictions, including EU, are expected to significantly impact sectors of the Canadian economy. Many Canadian corporations (particularly within the steel, aluminium, automotive, agriculture, and forestry industries) are directly and negatively impacted by the significant change in foreign policy by the Trump Administration in the United States, approaches to geopolitical conflicts and alliances, and global trade policy.[239] Several Canadian corporations face existential threats from the recent imposition of US tariffs on many Canadian goods and reciprocal tariffs implemented by Canada.[240]

163. Canada's strategic response to unprecedented US tariffs includes, as a priority, the diversification of trade relationships, and new expanded alliances with the UK and countries in the EU including France, and Germany. The EU currently has regulations requiring identification and disclosure of environmental risks, which likely includes NRR,[241] and a related carbon border adjustment mechanism. It is within this evolving, global business context that directors must consider whether NRR are material and constitute new potential harm to the interests of the corporation, or augment

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[235] World Wildlife Magazine, Handle with Care: Understanding the hidden environmental costs of cotton, (2014) *WWF*.
[236] International Science Council, The environmental impact of cotton production, (June 17, 2024).
[237] IG, "Historical volatility: A timeline of the biggest volatility cycles"; Market Watch, "What 100 years of stock-market crashes tells us about the S&P 500's stunning tariff comeback", (May 2, 2025).
[238] CSA, "CSA updates market on approach to climate-related and diversity-related disclosure projects", (April 23, 2025).
[239] Department of Finance Canada, "Canada announces new support for Canadian businesses affected by U.S. tariffs", (April 15, 2025).
[240] Bloomberg, "Which Canadian companies are most at risk of U.S. Tariffs?", (March 1, 2025).
[241] Consider the sustainability disclosures required under *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859* and *Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*.

existing and known risks to the corporation, such as climate-related claims or new regulatory requirements consistent with evolving trade relationships.

164. It is unclear at this time whether the impacts or trade tariffs will augment or diminish the potential materiality of NRR for Canadian corporations. Given the potential for changing global trade regimes and alliances to augment the importance of materiality of NRR, directors of Canadian corporations should prudently identify and assess the materiality of NRR in this new and evolving business context. It is our view that the existing trade and tariff context does not mitigate the potential materiality of NRR, but it may affect how material NRR are balanced with other risks that are material to the corporation.

6.3. Specific examples

165. Canadian corn and soybean producers have faced significant and arguably material nature-related risks as a result of their nature-related dependencies and impacts on nature. In the early 2000s, many Ontario corn and soybean producers increased their use of seeds treated with pesticides, and in particular insecticides containing neonicotinoids ("**neonics**") in order to increase their yields. Neonics were initially found to be effective insecticides facilitating increase crop yields, but had a range of nature-related **impacts**: highly toxic to pollinators including bees and other beneficial insects; persistent in soils and the plants on which they are sprayed; highly water soluble and conducive to run off into local water courses where they impacted many species of aquatic life; and toxic to beneficial insects feeding on treated plants and aquatic insects. The neurotoxic effects on pollinators were negatively affecting many agricultural producers, including without limitation honey producers, orchards, grain producers, local fisheries, and with time, corn and soy producers as a result of their nature-related dependence on (a declining number of) pollinators. In 2015, the Ontario government amended its pesticide regulations to place stringent limits on the use of neonics with the intent of reducing the use of neonic treated corn and soybean seeds by 80% (this being a nature-related transition risk).[242]

166. Many toiletry products in Canada previously contained plastic microbeads in personal-care products such as body scrubs and face washes. These microbeads were found to have significant nature-related impacts as they would pass through wastewater treatment plants and ultimately accumulate in ecosystems such as rivers, lakes, and oceans, where they could leach toxic chemicals and be ingested by fish and other wildlife.[243] In 2017, growing concerns from environmental groups and other stakeholders resulted in the federal government promulgating the *Microbeads in Toiletries Regulations*[244] under the *Canadian Environmental Protection Act, 1999*.[245] The regulations prohibit the manufacture, import, and sale of toiletries used to exfoliate or cleanse that contain plastic microbeads, including non-prescription drugs and natural health products. The regulations resulted in significant NRR for affected manufactures and retailers as they "*required not just reformulation of products, but the construction of new supply-chain transparency mechanisms*

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[242] *O. Reg. 63/09: General* under Ontario's *Pesticides Act*, R.S.O. 1990, c. P.11. See Ontario, "Regulating Neonicotinoids", (June 9, 2015) and Ontario, "Neonicotinoid rules for growers", (published June 9, 2015; updated February 1, 2024).

[243] For example see Browne, M. A., Niven, S. J., Galloway, T. S., Rowland, S. J., Thompson, R. C. "Microplastic moves pollutants and additives to worms, reducing functions linked to health and biodiversity", (2013), *Current Biology*, 23(23), 2388-2392; cited in Canada, "Microbeads – A Science Summary", (July 2015).

[244] *Microbeads in Toiletries Regulations*, SOR/2017-111.

[245] *Canadian Environmental Protection Act, 1999*, SC 1999, c 33.

capable of verifying that banned substances were being effectively excluded."[246] This meant that Canadian manufacturers and retailers that proactively identified and responded to the emerging NRR of microbead regulation arising from the nature-related impacts of their products benefited from early transition to compliant products.[247]

167. Tesla's experience in constructing its electric vehicle factory in Germany also provides an example of the importance of identifying material NRR and adequately managing them. Environmental groups and local communities successfully delayed the construction and operation of Tesla's Berlin-Brandenburg gigafactory as local authorities investigated whether the facility's operations could be sustained as the area experienced declining groundwater issues. The delays and nature-related risks to the project meant that "investors interpreted these delays as a threat to the company's aggressive expansion plans" and raised "questions over the viability of its long-term operations in the region."[248]

168. Insurance companies in Canada and North America are facing the threat of additional regulation limiting rates or premiums for property and casualty insurance.[249] Their actions in investing in properties being developed in climate and biodiversity vulnerable areas, may also exacerbate the negative impacts on affected people and nature. A 2021 report published by the Canada Climate Law Initiative, notes that these NRR may be material on both the asset and liability side of the balance sheet and affect the prudential risks of Canadian insurance companies, as the NRR of *"[c]limate change has become a prudential risk for Canadian insurance companies requiring their attention as a fundamental business issue.*" [250]

169. In each of these examples, each of the **nature-related dependencies** and **nature-related impacts** have become foreseeable and potentially financially material.

170. It is our opinion that NRR are known, well-documented, and foreseeable at this time. While the specific question of whether any NRRs are relevant or constitute a material risk of harm to the interest of a particular Canadian corporation will turn on the specific facts of that corporation, it is our opinion that NRR are potentially material to Canadian corporations. It is our view that, consistent with the CSSB and CSRD*,* both financial and impact materiality are relevant to investors. Financial materiality and impact materiality are intrinsically inter-related, and the distinction may be a difference in timing, not necessarily degree. NRR that have impact materiality may be very relevant to investor decisions and also become financially material as legal liability and supply chain risks over the corporation's longer term. In the context of NRR, it is our opinion that NRR (arising from

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[246] International Trade Council, "Canada's Ban on Microbeads (Bill C-62, June 2017) – Personal Care Supply Chain Traceability (2018)", (August 15, 2018).

[247] For example, prior to the introduction of the *Microbeads in Toiletries Regulations*, Loblaw's in-house Life Brand and President's Choice used plastic microbeads in numerous cosmetic and household products; however, in anticipating the prohibition of such products and responding to stakeholder pressure the company announced in June 2015 that it would eliminate microbeads (along with triclosan and phthalates) from all affected products by the end of 2018, see WWF-Canada, "WWF-Canada Applauds Loblaw's Plan To Ban Microbeads By 2018", (June 12, 2015)

[248] BloombergNEF, "Ten Case Studies Highlight the Financial Costs of Nature-related Risk", (December 8, 2023).

[249] See increasing regulatory oversight in jurisdictions such as California: California Department of Insurance, "In a California "first", Commissioner Lara announces enforcement of regulation to expand insurance coverage across state" (December 13, 2024); see also California Department of Insurance, Final Statement of Reasons, "Catastrophe Modeling and Ratemaking", (November 13, 2024.

[250] J. Sarra, "Life, Health, Property, Casualty: Canadian Insurance Company Directors and Effective Climate Governance", (February 2021), *Canada Climate Law Initiative*.

nature-related dependencies and nature-related impacts) are both reasonably foreseeable and capable of being material to a corporation.

7. NATURE-RELATED CORPORATE DISCLOSURES

7.1. Continuous disclosure obligations

171. Canada currently does not have legislated, mandatory requirements for the disclosure of NRR. However, the disclosure of certain nature-related risks, including climate-related risks, may fall within existing corporate disclosure obligations.[251]

172. The CSA has recently paused its initiatives around climate-related disclosures (and its draft National Instrument 51-107) in light of recent developments, uncertainties, and competitiveness concerns resulting from changes in the U.S. economic and trade policies.[252] In doing so, the CSA endorsed the view that material climate risks and NRR warrant disclosure and endorsed the CSSB disclosure framework for sustainability:

> *"Climate-related risks are a mainstream business issue and securities legislation already requires issuers to disclose material climate-related risks affecting their business in the same way that issuers are required to disclose other types of material information. The Canadian Sustainability Standards Board (CSSB) issued their inaugural sustainability standards in December 2024, which are generally aligned with the standards issued by the International Sustainability Standards Board. The CSSB standards provide a useful voluntary disclosure framework for sustainability and climate-related disclosure that issuers are encouraged to refer to when preparing their disclosures."*[253]

173. Canadian public companies are subject to continuous disclosure obligations which fall into two categories: periodic disclosures and timely disclosures. The CSA sets out continuous disclosure obligations in *National Instrument 51-102 Continuous Disclosure Obligations*[254] ("**NI 51-102**"), which require corporations to disclose "*material information*", and provides guidance on continuous disclosure requirements relating to environmental matters under securities legislation in *Staff Notice 51-333 Environmental Reporting Guidance*, ("**SN 51-333**").[255]

174. In *Theratechnologies Inc. v 121851 Canada Inc.* ("***Theratechnologies***"),[256] the SCC noted that:

a. Periodic disclosures "*must be made at regular intervals, typically through the regular provision of documents such as proxy circulars, financial statements and insider trading reports. In these regularly issued documents, companies must disclose all* ***material facts***";[257] (emphasis added) and

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[251] We also note that the federal government announced last year the intention to amend the CBCA to require climate-related financial disclosures for large, federally incorporated private companies. See, Department of Finance Canada, "Government advances Made-in-Canada sustainable investment guidelines and mandatory climate disclosures to accelerate progress to net-zero emissions by 2050", (October 9, 2024).

[252] See CSA, "CSA updates market on approach to climate-related and diversity-related disclosure projects".

[253] *Ibid*

[254] CSA, National Instrument 51-102 Continuous Disclosure Obligations, Unofficial Consolidated Version (9 June 2023).

[255] CSA Staff Notice 51-333 Environmental Reporting Guidance, (27 October 2010).

[256] *Theratechnologies Inc. v 121851 Canada Inc.*, 2015 SCC 18.

[257] *Ibid*., at para 23.

b. Timely disclosure obligations "*are imposed only when there has been a **material change** in the issuer's affairs. Material changes, which arise from changes in the issuers' business, operations or capital, must be disclosed at the time they occur*".[258] (emphasis added)

175. A material fact is "*a fact that would reasonably be expected to have a significant effect on the market price or value of the securities*".[259]

176. A material change is "*(i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or (ii) a decision to implement a change referred to in subclause (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable*".[260]

177. The SCC has clarified that the distinction between a 'material change' and a 'material fact' is deliberate and policy-based.[261]

178. Provincial securities legislation sets out the legally required continuous disclosure obligations of reporting issuers. For example, Part XVIII of Ontario's *Securities Act* sets out the continuous disclosure obligations, including disclosing where a material change occurs in the affairs of a reporting issuer, by issuing and filing a news release authorized by a senior officer disclosing the nature and substance of the change, and filing a report of that material change with the OSC as soon as practicable and in any event within ten days of the date on which the change occurs.[262] Similarly, section 146 of Alberta's *Securities Act*[263] provides that a reporting issuer shall, in accordance with the relevant regulations: (a) provide prescribed periodic disclosure about its business and affairs; (b) provide disclosure of a material change; and (c) provide other prescribed disclosure.[264]

179. Under NI 51-102 and SN 51-333, corporations with continuous disclosure obligations must disclose material information on environmental matters, including known trends, demands, commitments, events, or uncertainties that may reasonably impact the company's business and financial position. Examples include consumer preferences, supply-chain disruptions, and changes in costs due to environmental conditions.

180. SN 51-333 provides that the "*key question for an issuer is whether a particular environmental matter under consideration is material and requires disclosure*",[265] and advises that "*there is no uniform quantitative threshold at which a particular type of information becomes material"* but that context, timing, trends and quantitative and qualitative factors should be considered**.**[266]

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[258] *Ibid*., at para 24.
[259] *Ibid*.
[260] *Securities Act*, R.S.O. 1990, c. S.5, s. 1(1). We note that NI 51-102 provides a similar definition of 'material change', and that the definitions provided in Ontario's *Securities Act* are consistent with analogous securities legislation in other provinces.
[261] *Kerr* at para 38.
[262] *Securities Act* (Ontario), ss. 75(1)-(2).
[263] *Securities Act* (Alberta), RSA 2000, c S-4.
[264] We note that there are analogous provisions in the other provincial securities legislation.
[265] SN 51-333, p. 6.
[266] *Ibid*., p. 7.

181. Standard disclosure forms provided by regulators, such as the OSC, are consistent with the required periodic disclosure of material NRR, for example:

a. The OSC's *Management's Discussion and Analysis*, requires issuers to disclose material information, including known trends, demands, commitments, events or uncertainties that are reasonably likely to have an effect on the company's business that may not be fully reflected in its financial statements. These trends will include NRR associated with consumer preference, supply chain management, and changes in costs of labour or materials,[267] if material.

b. The OSC's *Annual Information Form*, requires an issuer to disclose if the company has implemented social or environmental policies that are fundamental to its operations, such as policies regarding the company's relationship with the environment, and matters that would be most likely to influence an investor's decision to purchase securities of the company, including general environmental risks,[268] which will include material NRR.

182. Directors who determine that an identified nature-related impact or dependency is material in the specific circumstances and context of the corporation, must also consider whether NRRs that arise may give rise to a "*material fact*", which requires disclosure in regularly issued documents, or a "*material change*", which requires timely disclosure.

183. A nature-related material fact requiring disclosure in a preliminary prospectus, for example, may include: (i) an issuer's assets (real estate, agriculture, or mining operations) are significantly exposed to flooding, drought, wildfire zones, or coastal erosion; (ii) knowledge that a project intersects with Indigenous treaty lands and may have significant nature-related impacts on Indigenous rights, and the potential for litigation or project delays; or (iii) an issuer's business relies on ecosystem services (e.g., freshwater availability, pollination, intact forests for tourism or carbon sequestration), and those services are under stress or degradation.

184. A nature-related material change may include the sudden occurrence of a nature-related systemic risk, such as the collapse of a major forest ecosystem due to an unprecedented wildfire. An event of this nature may give rise to a material change requiring timely disclosure for a prudent forestry company that will incur a material loss or write down associated with that forest ecosystem.

185. In determining whether a nature-related material change has occurred and may trigger timely disclosure of a material NRR, a reporting issuer should apply the established tests for disclosure and consider: (i) whether there has been a nature-related change in the business, operations or capital of the issuer; and (ii) whether the nature-related change was material, in the sense that it would be expected to have a significant impact on the value of the issuer's assets, liabilities or shares.[269] They should also consider the approach set out in the CSSB.

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[267] Form 51-102F1 *Management's Discussion and Analysis,* ss. 1.2 and 1.4.
[268] Form 51-102F2 *Annual Information Form*, ss. 5.1(4) and 5.2.
[269] See *Peters*, at para 73; citing *Theratechnologies Inc. v 121851 Canada Inc.*, 2015 SCC 18, at para 40; *Cornish v OSC*, 2013 ONSC 1310, 306 O.A.C. 107 (Div. Ct.), at para 46.

186. Applying this test, issuers must carefully consider whether a nature-related event, such as significant regulatory changes, environmental litigation, or systemic ecosystem impact, constitutes a material change that may trigger prompt disclosure obligations.

7.2. TNFD Recommendations and International Sustainability Disclosure Frameworks

187. In Canada, directors play a key role in overseeing the integration of financial materiality assessments into corporate governance, ensuring that disclosures remain both legally compliant and aligned with the company's strategic interests. Increasingly, Canadian corporations and financial institutions are also engaging in sustainability disclosures, which may include nature-related disclosures consistent with the TNFD Recommendations, or other international sustainability disclosure frameworks, where they consider and disclose not only financially material NRR impacts but also the impact of the company on society and the environment (impact materiality).

188. The TNFD is led by executives from 40 of the world's leading corporations and endorsed by over 500 global companies. The TNFD Recommendations consist of conceptual foundations for nature-related disclosures, a set of general requirements and recommended disclosures structured around the four pillars of governance, strategy, risk and impact management, and metrics and targets.[270] It comprises 11 disclosures adapted from the Task Force on Climate-Related Financial Disclosures ("**TCFD**") framework,[271] and three nature-specific disclosures covering priority locations, stakeholder engagement and the approach to nature-related dependencies, impacts, risks and opportunities in upstream and downstream value chains, financed activities and assets.[272]

189. The TNFD Recommendations and other corporate reporting standards like IFRS S1 and *IFRS S2 Climate-related Disclosures* ("**IFRS S2**") set voluntary standards for nature-related disclosures, unless adopted by regulators and made mandatory, while the CSSB may add further expectations of nature-related disclosures in Canada through CSDS 1 and *CSDS 2, Climate-related Disclosures* ("**CSDS 2**"), based on IFRS S2, if material.

190. IFRS S1 has been adopted by many Canadian corporations. It provides a comprehensive framework for companies to disclose sustainability-related financial information, focusing on material information that could affect the company's value over time and influence investor decision-making. It requires the disclosure of material sustainability risks and opportunities, including climate, environmental, social, and governance factors and is intended to assist companies in providing consistent, comparable, and decision-useful information that enables stakeholders to understand how sustainability issues impact a company's financial performance, risks, and long-term resilience. IFRS S1 serves as a foundational guideline for integrating sustainability into financial reporting and aligns with global action to increase transparency and accountability in ESG disclosures and reporting practices.

191. IFRS S1 does not include mandatory nature or biodiversity-specific disclosure obligations. However, disclosing material NRR likely falls within the overall IFRS S1 material disclosure

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[270] As of May 2025, there are 10 "TNFD Adopters" headquartered in Canada (Aecon Group Inc.; Alvéole; Cordiant Capital Inc; Cordiant Capital Inc.; EcoAdvisors; Manulife Financial Corp; Mercer International Inc.; Teck Resources Ltd.; Lester Asset Management; Ten Tree; West Fraser Timber Co. Ltd).

[271] TCFD, Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017).

[272] TNFD Recommandations.

framework, which requires that companies provide complete sustainability-related financial disclosures that "*present fairly all sustainability-related risks and opportunities that could reasonably be expected to affect an entity's prospects*".

192. IFRS 1 also stipulates that "*sustainability-related risks and opportunities arise out of the interactions between the entity and its stakeholders, society, the economy* ***and the natural environment*** *throughout the entity's value chain. These interactions take place within an interdependent system in which an entity both depends on resources and relationships throughout its value chain to generate cash flows and affects those resources and relationships through its activities and outputs, contributing to the* ***preservation, regeneration and development of those resources and relationships or to their degradation and depletion.*** *These* ***dependencies and impacts*** *might give rise to sustainability-related risks and opportunities that could reasonably be expected to affect an entity's cash flows, its access to finance and cost of capital over the short, medium and long term*" (emphasis added).

193. CSDS 1 aligns Canada's sustainability disclosure standards with global practices, further harmonizing Canadian corporate and financial reporting with international expectations while addressing the unique environmental considerations and regulatory landscape in Canada, including with respect to Indigenous rightsholders. CSDS 1 and CSDS 2 substantiate the need for companies to identify and evaluate the materiality of nature-related dependencies and impacts, and provide transparent, consistent information on these factors to meet investor and other stakeholder expectations and needs.

194. CSDS 1 (and IFRS S1) require companies that adopt the standard to disclose information that enables users of general-purpose financial reports to understand the effects of sustainability-related risks and opportunities on its strategy and decision-making, including disclosure of information about "*trade-offs between sustainability-related risks and opportunities that the entity considered (e.g., in making a decision on the location of new operations, an entity might have considered the environmental impacts of those operations and the employment opportunities they would create in a community).*"[273]

195. Guidance provided by CSSB on CSDS 1 supports the disclosure of material nature-related dependencies and impacts on nature:

> "*if an entity's business model depends on a natural resource — such as water — the entity could both affect and be affected by the quality, availability and affordability of that resource. Specifically, degradation or depletion of that resource — including resulting from the entity's own activities and from other factors — could create a risk of disruption to the entity's operations and affect the entity's business model or strategy and could ultimately negatively affect the entity's financial performance and financial position. In contrast, regeneration and preservation of that resource — including resulting from the entity's own activities and from other factors — could positively affect the entity*".[274]

196. The adoption of CSSB standards has been monitored by CSA, which recently noted in its announced pause of consultations on the CSA *Proposed National Instrument 51-107 Disclosure of Climate-related Matters* that the CSSB standards "*are generally aligned with the standards issued*

[273] CSDS 1, para 33(c).
[274] *Ibid*., Appendix B, Application Guidance, Sustainability-related risks and opportunities, para B3.

by the [ISSB]. The CSSB standards provide a useful voluntary disclosure framework for sustainability and climate-related disclosure that issuers are encouraged to refer to when preparing their disclosures."[275] The CSA further indicated that "*[i]n order to become mandatory under Canadian securities legislation, the CSSB standards must first be incorporated into a CSA rule*" and that CSA will consider the final CSSB standards and may include modifications appropriate for the Canadian capital markets.[276]

197. As noted in Section 6, the TNFD recommends adopting both a financial materiality and impact materiality disclosure framework. While financial materiality remains the basis for mandated disclosures under Canadian securities law, companies should ensure that their reporting approach is adaptable to evolving expectations of other stakeholders, including regulators and investors.

198. The materiality approach taken by the TNFD raises the question as to whether and how the expectations under the TNFD Recommendations may influence the nature of what is required to discharge directors' duties under the CBCA, including:

    a. by supporting the TNFD framework, investors have indicated that nature-related impacts and dependencies, risks and opportunities are relevant;

    b. by becoming aware of the impacts and dependencies, risks and opportunities through disclosure-related analysis and reporting, prudent and diligent directors may ask whether any of these matters could create foreseeable and material risks to the company that should reasonably be addressed in order to promote the continued financial and operational success of the company;

    c. when considering and managing all of a company's nature-related dependencies and impacts on nature could be in the best interest of the company in the long term as part of strategic oversight, regardless of their influence on the company's short-term value or material risks; and

    d. the possibility that the TNFD Recommendations could raise the general standards of care and loyalty for directors of companies that are not making disclosures, in jurisdictions or sectors where their peers are reporting.

199. The TNFD provides recommendations for governance and risk and impact management, recommending the disclosure of the board's oversight of nature-related dependencies, impacts, risks and opportunities, the company's processes to identify, assess and manage its disclosed matters, and the integration of such processes into risk management.

200. The TNFD Recommendations specifically address and require systems, oversight, and disclosures with respect to nature-related impacts on Indigenous Peoples and Local Communities ("**IPLC**") under its governance pillar. This IPLC disclosure recommendation is particularly relevant in the

[275] CSA, "CSA updates market on approach to climate-related and diversity-related disclosure projects", (April 23, 2025).
[276] CSA, "Canadian securities regulators issue statements on proposed sustainability disclosure standards and ongoing climate consultation"", (March 13, 2024).

Canadian context due to the increasingly important role IPLC are playing in resource and infrastructure development, as well as nature protection and restoration across Canada.

201. Increased adoption of the reporting framework set out in the TNFD Recommendations by financial institutions and transnational corporations is likely to influence the interpretation and expectation of directors' duties and their context in Canada. Increased adoption and adherence to the TNFD Recommendations helps demonstrate board diligence by actively considering, managing, and disclosing NRR within their governance and risk oversight responsibilities. The ISSB is also undertaking future work on the disclosure of risks and opportunities associated with BEES,[277] which is expected to complement and build on the TNFD Recommendations.[278] As such, it is likely that the global baseline for nature-related disclosures will continue to closely follow the TNFD Recommendations.[279]

202. It is our opinion that:

    a. the **identification of an NRR that would reasonably be expected to have a significant effect on the market price or value of the securities of a corporation with a continuous disclosure obligation is a material fact that must be disclosed** through the regular provision of documents such as proxy circulars and financial statements;

    b. the **occurrence of an NRR that causes a change in the business, operations or capital of a corporation** with a continuous disclosure obligation 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, is a **material change that must be disclosed** at the time it occurs; and

    c. **prudent directors should also consider disclosure of NRR in a manner consistent with the CSSB and TNFD**.

203. It is our view that it is prudent for directors to identify and disclose NRR that have both financial and impact materiality as this practice is consistent with acting in the longer-term interests of the corporation, its customers, suppliers, and the environment. The disclosure of NRR is particularly advised if the company has significant nature-related dependencies and impacts on nature, impacts on Indigenous rightsholders, or if the company may be exposed to reputational, financial, and litigation risks as a result of the impacts on nature from the corporation's business operations, services, or investments.

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[277] IFRS, Feedback Statement: IFRS Sustainability Disclosure Standards, Consultation on Agenda Priorities (June 2024).

[278] IFRS, ISSB delivers further harmonisation of the sustainability disclosure landscape as it embarks on new work plan (June 2024).

[279] We note that the TNFD and IFRS Foundation recently announced the signing of a Memorandum of Understanding to enhance nature-related financial disclosures for capital markets. The TNFD and ISSB aim to "deepen the collaboration between the two organizations as the ISSB considers the TNFD recommendations in its research into the needs of global capital markets for information about nature-related risks and opportunities". See IFRS Foundation, "IFRS Foundation and TNFD formalize collaboration to provide capital markets with high-quality nature-related information", (April 9, 2025).

7.3. Impact of Breach of Continuous Disclosure Obligations

204. It is generally an offence under provincial securities legislation[280] to make a statement in any document required to be filed or furnished under applicable securities law (application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular) 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.[281]

205. Directors face significant penalties for authorizing and permitting misleading statements to be made in disclosure documents. For example, s. 122(3) of Ontario's *Securities Act* provides that every director of a company who authorizes, permits or acquiesces in the making of a misleading statement by the company or person is guilty of an offence and is liable on conviction to a fine of not more than CAD 5 million or to imprisonment for a term of not more than five years less a day, or to both.[282]

206. Directors and corporations typically will not contravene disclosure obligations if they did not know, and in the exercise of reasonable diligence could not have known, that a 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.[283] In light of the plethora of information set out in Section 3, above, it is increasingly difficult for directors to argue that they did not know, or ought not to have known, that NRR are foreseeable and may be potentially material to the corporation.

207. It is noteworthy that while the business judgment rule may provide directors with some protection for informed "business decisions" made in good faith, it does not shield them from liability arising from a failure to fulfill their disclosure obligations under applicable securities legislation. Directors may be held personally liable for failure to disclose material information or for issuing misleading disclosures. Disclosure is fundamentally a matter of legal obligation, and the SCC expressly noted that the business judgment rule "*is a concept well-developed in the context of business decisions* ***but should not be used to qualify or undermine the duty of disclosure***." [284]

208. Corporations are required to disclose material NRR pursuant to their continuous disclosure obligations. For example, s. 126.2(1) of Ontario's *Securities Act* provides that 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.

209. Pursuant to s. 126.2(2), a breach of s. 126.2(1) may give rise to civil liability for directors under Part XXIII of the Ontario's *Securities Act*. Section 130(1)(c), provides that where a prospectus, together with any amendment to the prospectus, contains a misrepresentation, a purchaser who purchases

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[280] Note: we have focused the discussion of this section on Ontario's *Securities Act* while noting that similar provisions and penalties are provided in the securities legislation of other Canadian provinces.
[281] For example, see *Securities Act* (Ontario), s. 122(1).
[282] *Ibid*., s. 122(3).
[283] *Ibid*., s. 122(2).
[284] *Kerr* at para 54 (emphasis added).

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 every director of the issuer at the time the prospectus or the amendment to the prospectus was filed.

210. Directors must exercise heightened diligence in overseeing the identification, assessment, and disclosure of NRR that may be material to their corporations. Under provincial securities legislation, a failure to disclose such risks may expose corporations and their directors to significant liability. Misstatements or omissions in continuous disclosure documents relating to material NRR, will attract both regulatory sanctions and civil liability. Directors who authorize, permit, or acquiesce in such contraventions may be held personally liable, regardless of whether charges have been laid against the corporation. The standard of reasonable diligence is a critical safeguard but requires directors to actively ensure that systems are in place to detect, evaluate, and disclose material NRR. Directors who fail to engage with material NRR risk falling short of their legal disclosure obligations.

211. Corporations may also be exposed to greenwashing claims where their environmental disclosures, including statements regarding material NRR, are false or misleading. Directors who fail to identify or disclose material NRR, who permit or cause the corporation to make misleading representations, or remain silent where disclosure is required, may be liable not only under securities legislation, but also under the newly amended *Competition Act*. In particular, misrepresentations and false statements about nature-related dependencies and impacts on nature, may contravene the *Competition Act's* consumer protection provisions aimed at deceptive environmental marketing practices and claims.[285]

[285] Bill C-59 has expanded the potential liability for greenwashing by: (i) amending section 74.01 of the *Competition Act* to expressly address misleading environmental benefits claims made to the public including: (a) any statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that are not based on an adequate and proper testing; and (b) any representations with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that are not based on adequate and proper substantiation in accordance with an internationally recognized methodology. Secondly, the onus is placed on the advertiser making such claims to prove, if they are challenged, that the claims are based on adequate and proper testing or substantiation.

8. BEST PRACTICES

212. **Identification and assessment of NRR**. NRR, including biodiversity loss or ecosystem degradation, can have substantial impacts on a corporation's operations, such as disruptions to supply chains, increased operational costs, or heightened regulatory compliance obligations. The TNFD Recommendations provide an internationally recognized and endorsed framework for corporations to assist in identifying, assessing, and reporting on nature-related impacts and dependencies. The TNFD Recommendations may assist directors in demonstrating their diligence in discharging their fiduciary duty and duty of care in a manner consistent with an internationally recognized and endorsed framework for NRR. Directors who proactively integrate these risks into their strategic decision-making processes will be better able to demonstrate their diligence in discharging their related duties.

213. Directors should therefore make the appropriate inquiries to ensure that the best and long-term interests of the company are served by identifying and considering NRR that may affect the corporation's long-term viability, reputation, or economic value. This may include inquiring about the impacts of biodiversity loss and ecosystem services on the company, pending legislative or regulatory requirements, value chain exposure to NRR, resource dependency, and changing nature-related investor and consumer expectations. Identification of NRR also assists directors in making well-informed, longer-term decisions that proactively address NRRs that may impact the corporation's future financial performance, operational stability, and overall resilience.

214. **Actions to balance, manage, and mitigate material NRR**. Directors and companies may take proactive steps to *mitigate* identified and material NRR, thereby strengthening resilience and protecting long-term value. Effective risk mitigation requires a comprehensive approach that includes establishing strong governance frameworks, implementing rigorous oversight procedures, and regularly identifying and assessing both internal and external NRR.

215. Prioritizing risk management includes fostering a culture of compliance, setting up specialized committees when necessary, and ensuring transparent communication with all relevant stakeholders.

216. Boards may also choose to ensure appropriate nature-related expertise among their members and establish a board governance and management system to ensure that management identifies and assesses both imminent and longer-term NRR, and ensures board oversight of that process, potentially as an integral part of enterprise risk management.

217. Directors may demonstrate that they have acted prudently and on a reasonably informed basis and discharged their duty of care related to foreseeable and potentially material NRR by taking the following actions, as relevant in the circumstances of the corporation:

    a. Consider any of the extensive and readily available information on NRR that Canadian directors reasonably ought to know, as set in Section 3 above, and the remainder of this opinion. Directors should at least identify, consider, and diligently document their consideration of:

        i. international and Canadian government policy on NRR;

        ii. published frameworks for NRR;

iii. the corporation's nature-related dependencies and impacts on nature;

iv. the materiality of identified NRRs; and

v. the expectations of investors and other integral stakeholders (including Indigenous rightsholders) related to NRR.

b. Have a documented and ongoing process to ensure that:

i. directors are reasonably informed about NRR and have made inquiries of management and/or sought expert and external assistance on identifying the nature-related dependencies and impacts of the corporation;

ii. there is appropriate governance and ongoing risk management of NRR through steps that may include incorporating NRR that are material to the corporation into ERM reporting, and scenario analysis of foreseeable "worst case" / "once-in-a-century" events; and

iii. at a minimum the company has identified and considered its material NRR (dependencies and impacts) on the environment and the company's integral stakeholders (including Indigenous rightsholders, customers, and suppliers).

c. Consider the comparable circumstances of other corporations in their sector, particularly where the sector is highly or moderately nature dependent (including forestry, manufacturing, financial services, insurance, mining, agriculture, real estate, energy, and retail and fashion).

d. Balance and manage NRR in the context of all other risks and opportunities of the corporation and prudently react when an NRR governance or management system has failed.

218. In discharging their duty of care, directors should rely on available NRR information, make reasonable inquiries, engage experts, and ensure that management and the board take adequate time to fully understand: (i) the company's impacts on nature (including Indigenous rights and traditional territories), and (ii) its dependencies on nature, biodiversity, ecosystem services both directly and through its supply chains.

219. The prudent director may also wish to consider sector-specific guidance available through the TNFD, particularly if the company is in a sector that has been determined to be highly nature-dependent, such as forestry, manufacturing, financial services, insurance, mining, agriculture, real estate, and energy. The prudent director may also wish to specifically identify and consider nature-related impacts on the company's stakeholders including Indigenous rightsholders.

APPENDIX – PROVINCIAL STATUTORY DUTIES ANALOGOUS TO CBCA, S. 122

We note that provincial legislation[286] largely mirrors the federal CBCA:

- Pursuant to s. 142(1) of B.C.'s *Business Corporations Act*, a director, when exercising the powers and performing the functions of a director of the company, 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.[287]

- Pursuant to s. 122(1) of Alberta's *Business Corporations Act*, every director of a corporation in exercising the director's powers and discharging the director'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.[288]

- Pursuant to s. 9-23(1) of Saskatchewan's *The Business Corporations Act, 2021*, Every director of a corporation in exercising the director's powers and discharging the director's duties shall: (a) act honestly and in good faith with a view to the best interests of the corporation; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.[289]

- Pursuant to s. 117(1) of Manitoba's *The Corporations Act*, every director of a corporation in exercising his powers and discharging his duties shall (a) act honestly and in good faith with a view to the best interests of the corporation; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.[290]

- Pursuant to s. 134(1) of Ontario's *Business Corporations Act*, every director 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.[291]

- Pursuant to s. 79(1) of New Brunswick's *Business Corporations Act*, every director and officer of a corporation in exercising his powers and discharging his duties shall (a) act honestly and in good faith, and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances in the best interests of the corporation.[292]

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[286] We note that pursuant to s. 119 of Quebec's *Business Corporations Act*, chapter S-31.1, directors are bound by the same obligations as are imposed by the *Civil Code of Québec*, CQLR c CCQ-1991 on any director of a legal person and in the exercise of their functions, directors are duty-bound toward the corporation to act with prudence and diligence, honesty and loyalty and in the interest of the corporation. However, an analysis of a director's duty under Quebec's Civil Code is beyond the scope of this opinion.

[287] *Business Corporations Act (B.C.)*, SBC 2002, c 57, ss. 142(1)(a) and 142(1)(b).

[288] *Business Corporations Act (Alberta)*, RSA 2000, c B-9, ss. 122(1)(a) and 122(1)(b).

[289] *The Business Corporations Act, 2021 (Saskatchewan)*, SS 2021, c 6, ss. 9-23(1)(a) and 9-23(1)(b).

[290] *The Corporations Act (Manitoba)*, CCSM c C225, ss. 117(1)(a) and 117(1)(b).

[291] *Business Corporations Act (Ontario)*, RSO 1990, c B.16, ss. 134(1)(a) and 134(1)(b).

[292] *Business Corporations Act (New Brunswick)*, SNB 1981, c B-9.1, ss. 79(1)(a) and 79(1)(b).

- Pursuant to s. 97(1) of Prince Edward Island's *Business Corporations Act*, every director of a corporation, in exercising the person's powers and discharging the person's duties, shall (a) act honestly and in good faith with a view to the best interests of the corporation; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.[293]

- Nova Scotia's *Companies Act*[294] does not provide statutory fiduciary duties and the duty of care for directors *per se* and instead the scope of these duties is owed exclusively through operation of the common law.[295]

- Pursuant to s. 203(1) of Newfoundland and Labrador's *Corporations Act*, a director of a corporation in exercising his or her powers and discharging his or her duties shall (a) act honestly and in good faith with a view to the best interests of the corporation; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.[296]

- Pursuant to s. 124(1) of Yukon's *Business Corporations Act*, every director and officer of a corporation in exercising powers and discharging 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.[297]

- Pursuant to s. 123(1) of Northwest Territories' *Business Corporations Act*, every director and officer of a corporation shall, in exercising his or her powers and discharging his or her duties, (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.[298]

- Pursuant to s. 123(1) of Nunavut's *Business Corporations Act*, every director and officer of a corporation shall, in exercising his or her powers and discharging his or her duties, (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.[299]

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[293] *Business Corporations Act (PEI)*, RSPEI 1988, c B-6.01, ss. 97(1)(a) and 97(1)(b).
[294] *Companies Act (Nova Scotia)*, RSNS 1989, c 81.
[295] See *Link v Link*, 2020 NSSC 293 (CanLII), at para 38; citing S. Bradley, "Nova Scotia Companies Act and Commentary", *LexisNexis Canada*, (2015), at p. 57, where the author notes that the duty of care and fiduciary duties of directors "are not codified explicitly in the [Nova Scotia *Companies Act*]" and are instead "owed [by] directors of NS CA companies exclusively by operation of the common law."
[296] *Corporations Act (NL)*, RSNL 1990, c C-36, ss. 203(1)(a) and 203(1)(b).
[297] *Business Corporations Act (Yukon)*, RSY 2002, c. 20, ss. 124(1)(a) and 124(1)(b).
[298] *Business Corporations Act (NWT)*, SNWT 1996, c 19, ss. 123(1)(a) and 123(1)(b).
[299] *Business Corporations Act (NT)*, SNWT (Nu) 1996, c 19, ss. 123(1)(a) and 123(1)(b).