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In-Depth: Mergers & Acquisitions Litigation (formerly The Mergers & Acquisitions Litigation Review) offers a high-level overview and analysis of the main litigation issues and trends surrounding M&A activity in key jurisdictions worldwide. It examines the most common types of disputes and claims that may be pursued, while also highlighting the procedural and substantive law affecting the legal merits of such claims.

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Summary

Introduction

Canadian M&A litigation is an established feature of corporate and securities law in Canada. It arises in both domestic private M&A transactions and public company M&A deals, where litigation can proceed on a dual track before the courts and securities regulators. Securities regulators and specialised commercial courts in Toronto, Montreal and Vancouver deal with pre-closing M&A disputes in real time, whereas post-closing disputes may take four to five years to resolve. While Canadian courts defer to the proper exercise of directors' business judgement, boards should expect their decision-making process to be carefully scrutinised, as minority shareholders and other corporate stakeholders may challenge board decisions where the terms of a merger or acquisition are particularly unfair or prejudicial to their interests. Proactively structuring a robust board process is important in the context of public M&A transactions, particularly given hostile bidders' use of activist shareholder tools to gain tactical advantage and the growing willingness of Canadian securities regulators to intervene. Canadian courts will enforce the bargains struck by the parties, including the allocation of pre- and post-closing risk through break-up fees, material adverse change clauses (and exceptions or carve-outs), reserves for potential liabilities and earn-out payments, all of which require careful drafting to reflect the allocation of risk between the parties.

Year in review

Early forecasts of a sharp rebound in Canadian M&A for 2025 have given way to a more complex reality. Deal value has surged: by mid-year, disclosed enterprise value was significantly higher than in the same period in 2024, driven by a handful of large-ticket transactions. In contrast, deal volume has remained subdued; the number of transactions in the first half of 2025 was slightly lower than in the first half of 2024, reflecting buyer and seller caution amid macroeconomic and geopolitical uncertainty.

The increase in value has been concentrated in sectors such as technology, financial services and basic materials (including energy and resources) – areas in which Canada's endowment and infrastructure provide a competitive edge. Private capital remains an important driver of deal-making, with private equity and institutional investors (including Canadian pension funds) actively deploying capital into Canadian targets. Take-private transactions remain a notable feature of the market.

On the public M&A side, two of Canada's leading securities regulators reinforced the significance of the 2016 revisions to the regulation of takeover bids in Canadian public market M&A (the Take-Over Bid Rules). These decisions clarified the boundaries of directors' fiduciary duties and business judgement when responding to unsolicited takeover proposals with defensive tactics such as shareholder rights plans (poison pills), and confirmed that securities regulators will take a robust view of their public interest jurisdiction under securities law.

Legal and regulatory background

Canadian M&A transactions are governed by federal statute and the laws of Canada's 13 provinces or territories, depending on the jurisdiction of incorporation of the parties, the jurisdiction where the contract was formed and whether the governing contract includes a choice of law and venue provision. With the exception of the Province of Quebec, Canada's territories and provinces are common law jurisdictions. In Quebec, the Civil Code of Quebec applies to contractual and tortious disputes.[1] This chapter does not address Quebec law.

Canada does not have a federal securities regulator, therefore M&A transactions involving publicly listed companies will also be subject to the jurisdiction of one or more provincial securities regulators. Despite the lack of a federal regulator, there is a high level of uniformity in provincial securities legislation[2] and close cooperation and coordination between Canadian provincial securities regulators, including with respect to:

1. the Take-Over Bid Rules;[3]
2. the solicitation of shareholder proxies;
3. board governance;[4]
4. the use of defensive tactics[5] such as shareholder rights plans (poison pills), lockup agreements and private placements; and
5. the protection of minority shareholders in transactions that involve a conflict of interest.[6]

Securities regulators have the power to review defensive tactics in the context of a takeover bid as well as to intervene under their public interest jurisdiction to address abusive conduct.

Mergers of Canadian businesses exceeding prescribed party and transaction-size thresholds must comply with the notification regime under the Competition Act.[7] In certain circumstances, these transactions must also be reviewed by the Commissioner of Competition, who has the authority to bring an application before the Competition Tribunal to impose conditions when the transaction is deemed to substantially lessen or prevent competition.[8]

Non-Canadians must also comply with the notification requirements in the Investment Canada Act,[9] which can require federal approval of certain acquisitions, including those that exceed a prescribed value or involve a 'cultural business' or a business engaged in matters of national security.[10]

Shareholder claims

Common claims and procedures

Oppression claims

In Canada, many shareholder claims that might be framed in other jurisdictions as a breach of fiduciary duty will be advanced under the statutory oppression remedy. Most shareholder claims in connection with private M&A transactions will be advanced using the oppression remedy, given its flexibility. Oppression claims are also made in the context of M&A transactions involving public corporations, but these claims tend to be part of the shareholder activist's arsenal and are not typically brought on behalf of majority shareholders.[11]

The oppression remedy protects not just shareholders' legal rights but also their reasonable expectations. Oppression cases involve a highly fact-specific and contextual analysis that begins first with a consideration of the expectations of the complainant and whether those expectations are objectively reasonable in the circumstances. The factors the court will consider in determining whether expectations are reasonable are not closed and can include general commercial practices, the nature of the corporation, past practices, representations and agreements, applicable statutes and regulations, and even preventative steps the complainant could have taken for its own protection. Because context is so important, reasonable expectations of shareholders in closely held corporations will not be the same as those of shareholders in widely held public companies.[12] If the expectations are found to be objectively reasonable, the next question is whether those expectations were violated or defeated by conduct that 'was oppressive' or 'unfairly prejudiced' or that 'unfairly disregarded' those expectations.[13] While originally intended to provide minority shareholders with a remedy for oppressive treatment by majority shareholders or those in control of the corporation, the oppression remedy is available to majority shareholders where the conduct affects the shareholder directly, distinct from harm suffered by all shareholders generally or the corporation itself.[14]

Derivative actions

The common law rule in *Foss v. Harbottle* – that a shareholder cannot bring a claim for a harm done to the corporation – is well entrenched in Canadian law and these claims must be brought by way of derivative action, which is codified in Canadian corporate statutes.[15] Despite the broad scope of the shareholder oppression remedy, Canadian law distinguishes between personal shareholder claims and claims that properly belong to the corporation (such as a claim for damages from a counterparty for a failed M&A transaction).[16] While derivative claims and shareholder oppression claims are not always mutually exclusive,[17] claims that will affect all shareholders equally are typically seen to belong to the corporation and should be brought by way of derivative action rather than by the oppression remedy.

Claims for misrepresentation

Shareholders have claims at common law and under securities legislation for damages caused by misrepresentations made in connection with a proposed M&A transaction. Where the misrepresentations are fraudulent, shareholders may be able to claim rescission.[18]

Statutory causes of action exist in securities legislation for misrepresentations in a takeover bid circular, including the right of shareholders to claim rescission against the offeror in a takeover bid or damages against the offeror, its directors, officers and other

third parties.[19] A 'misrepresentation' has a materiality threshold based on an objective 'reasonable investor' standard.[20] Note that the statutory claim for secondary market misrepresentations is not available to shareholders who buy or sell securities in connection with or under a takeover bid.[21] Security holders who elect to sell their shares on the secondary market during the currency of the bid (rather than accept or reject the offer) must seek their remedy under the secondary market misrepresentation regime.[22] These claims are subject to a cap on damages and a requirement to obtain leave of the court before proceeding with a proposed secondary market misrepresentation claim (which will typically proceed as a class action).[23] The secondary market misrepresentation regime is complex and outside the scope of this discussion.

Minority shareholder protections – public company takeover bid regime

If shareholders of public companies[24] believe the Take-Over Bid Rules have been violated, they may seek recourse before the relevant provincial or territorial securities regulatory authority. Rules exist to determine which regulator is the 'principal regulator' with jurisdiction.[25] Public companies listed on one of Canada's securities exchanges, such as the Toronto Stock Exchange, will also be subject to the rules of that exchange, which may include a requirement that listed issuers file and receive exchange approval for the transaction (or comply with any conditions imposed by the exchange).

Shareholder remedies

Canadian corporate statutes contain a number of remedies that individual shareholders may seek, including the statutory oppression remedy and the right of a dissenting shareholder to receive fair market value for their investment.

There is considerable overlap between securities law remedies and corporate law remedies. Depending on the nature of the remedy, a party may be required to bring concurrent proceedings before the securities regulator (for example, to obtain a cease trade order or correct public disclosure) and a provincial or territorial superior court to seek interim relief under the statutory oppression remedy, plan of arrangement provisions or for a compliance order under the corporate statute.

Pre-closing remedies

Oppression remedy

The oppression remedy gives the court wide discretion to make interim and final orders restraining the conduct complained of, varying or setting aside a transaction, or ordering compensation. The oppression remedy can therefore be used to obtain both pre-closing and post-closing remedies. While the oppression remedy grants the court broad remedial authority to make any order it sees fit, this discretion is exercised on a principled basis with judicial restraint – as one case noted, it is a 'scalpel' used to carefully tailor a remedy that goes no further than necessary to remedy the oppressive conduct, not a 'battle axe'.[26] Therefore, an award of substantial damages to shareholders in connection with an M&A transaction would be unusual.

The oppression remedy cannot be used by a bidder to tip the balance in favour of its proposed transaction. While courts can be sceptical of oppression claims brought in the context of a contested transaction, it still offers a route to challenge decisions of boards in navigating hostile takeover bids, and in procuring alternative transactions that incorporate onerous break fees or other deal protection mechanisms. However, it is important to understand that Canadian courts do not judge directors' decisions under a heightened standard, such as the 'enhanced scrutiny' standard applied by Delaware courts.[27]

Dissent rights and payment of fair market value

The dissent remedy is also available pre-closing. Shareholder dissent rights are triggered in a variety of instances, and in the context of a merger or acquisition, they will be triggered if the proposed transaction:

1. will proceed by way of an amalgamation[28] or will require continuance under the laws of another jurisdiction;[29]
2. involves the sale of 'all or substantially all' of the corporation's undertaking (for example, through the sale of the corporation's operating subsidiaries);[30]
3. will involve a change to the rights, privileges and conditions attaching to the shares or a class of shares of either corporation or other amendments to the articles of either corporation;[31] or
4. involves a going-private transaction or shareholder squeeze-out.[32]

Dissent rights will also be triggered if the proposed transaction involves an amendment to the corporation's articles that affects the rights of a certain class of shareholders, including by removing or reducing a right to dividends or other rights, creating new classes of shares with equal or superior rights, or if the transaction involves the exchange, reclassification or cancellation of all or part of the shares of a certain class for shares of a different class.[33]

A dissenting shareholder has a right to be paid fair value for their shares, determined on the business day before the resolution triggering the dissent rights is adopted. To be paid fair value, a dissenting shareholder must follow the procedures and comply with the steps set out in the applicable corporate statue, including delivering a written objection to the resolution triggering the dissent right at or before the shareholders' meeting at which the resolution will be voted on.[34] Dissenting shareholders cease to have rights other than the right to be paid fair market value.[35]

Dissent rights can pose a significant financial strain on the corporation if there is substantial shareholder opposition to a transaction. As a result, merger transactions and friendly acquisitions are sometimes structured as statutory plans of arrangement, which do not automatically trigger dissent rights but do require court supervision and approval.-[36] Dissent rights are also triggered in a two-stage takeover or acquisition where minority shareholders who did not accept the initial offer can be squeezed out or forced to sell their shares if the takeover offer was accepted by not less than 90 per cent of shareholders of the class of shares subject to the offer bid.[37]

Intervention by securities regulators

Securities regulators, and in certain instances, exchanges, have jurisdiction to intervene in a range of circumstances to ensure that the takeover bid process is fair to all participants. Securities commissions have specific jurisdiction to make orders requiring compliance with securities laws, restraining non-compliance, restraining the distribution of documents issued in connection with a takeover bid or requiring the distribution of an amended, varied or corrected document.[38]

The Take-Over Bid Rules were intended to reduce, if not eliminate, the need for securities regulators to intervene in contested takeover bids, and have made it clear that neither the bidder nor the target board can structure either an offer or a response to an offer in a way that is inconsistent with the Rules.[39] Canadian securities regulators recognise defensive tactics and deal-protection mechanisms as legitimate responses to unsolicited takeover bids but will contextually examine tactics adopted by the target. They will intervene where those tactics are abusive to shareholder rights or otherwise undermine the animating principles of the takeover bid regime specifically or engage the regulator's public interest generally.[40]

Securities legislation also provides shareholders with a right to bring an application to the courts for interim (injunctive) relief to address non-compliance with securities regulations governing takeover bids, including orders prohibiting a person or company from exercising voting rights attaching to any securities, and to make final orders as the court sees fit, including awarding compensation for damages, ordering the rescission of the acquisition or ordering the sale of securities acquired under the takeover bid.[41]

Post-closing remedies

The oppression remedy is not restricted to pre-closing relief. A properly framed oppression claim could be advanced post-closing if the shareholder can point to both a defeated reasonable expectation and a remedy that will meaningfully address the harm caused by the oppressive conduct. For example, where a step in the transaction disregarded a shareholder's reasonable expectations as to how their securities would be treated, the oppression remedy can be used to either restore the lost rights or compensate the shareholder in damages if restoration is either not possible or not the preferred remedy. Similarly, a derivative claim could be brought for breach of fiduciary duty, subject to a court granting leave to proceed with the claim. Derivative claims and shareholder oppression claims are not mutually exclusive, and there can be overlap between the relief sought.[42] Given that a derivative action is brought on behalf of the corporation, however, any benefit to shareholders is indirect and based on the award increasing share value.

Shareholders or former shareholders may have contractual claims in the case of private M&A transactions if they were parties to the transaction agreements (as will often be the case in a share acquisition). Public shareholders in a failed 'friendly' M&A transaction, however, will not be parties to the transaction agreements[43] and will therefore not have personal claims for breach of contract.

Shareholders may also have claims for misrepresentation, where the remedy is typically damages. Where the misrepresentations are contained in a takeover bid circular or a directors or officers circular, a statutory cause of action exists that carries two significant advantages over the common law cause of action. First, it removes the common law requirement to prove individual reliance on the misrepresentation. Second, the statutory

cause of action replaces the need to establish causation between the misrepresentation and market losses with a presumption that fluctuations in the value of the responsible issuer's securities are attributable to the misrepresentation.[44] This is a rebuttable presumption, however, and will exclude losses that the offeror (or other defendants) can prove were not caused by the misrepresentation.[45]

Shareholder defences

Business judgement rule

In Canadian law, directors' fiduciary duties are owed to the corporation, even where the corporation is the target of a takeover bid. Courts will defer to the directors' business judgement in determining whether it is in the best interests of the corporation to enter a merger or acquisition, and in selecting the most appropriate transaction structure to achieve its business objective. Canadian courts recognise that directors take into account a wide range of issues when forming their business judgement, such as tax and financing, the short- and long-term interests of the corporation and the interests of corporate stakeholders.

However, Canadian courts will carefully scrutinise the process by which the board arrived at its decision, particularly where the board is considering a change of control transaction.-[46] In the context of a takeover bid or merger, the target board must demonstrate that its business judgement was both informed and independent, with appropriate steps taken to insulate the decision-making process from the influence of inside directors and senior management (who are presumptively in a conflict of interest when faced with a potential transaction that will result in a change of control). The use of independent committees and independent advisers are well-established practices to protect the independence of the board's decision-making process.[47] These measures are important because the business judgement rule is not determinative in all contexts. For example, Canadian courts will be less deferential to a board's business judgement when assessing the fairness of a plan of arrangement[48] or the board's adoption of defensive tactics.[49]

Statutory defences in statutory securities misrepresentation actions

In addition to defences on the merits (such as challenging whether the alleged statement was untrue or was 'material'), offerors, directors, officers and other classes of defendants have specific defences to statutory securities misrepresentation claims.[50] A 'safe harbour' defence is also available for forward-looking information.[51]

While shareholders do not need to prove that they relied on the alleged misrepresentation, they cannot seek rescission or damages if they knew that the statement was a misrepresentation.[52] Further, directors and officers, as well as third parties who consented to the inclusion of their reports, opinions or statements in the circular, have additional defences that are not available to the issuer or offeror, including:

1. demonstrating that they lacked knowledge of the misrepresentation;
2. showing they did not consent to its inclusion;
3.

demonstrating that they conducted due diligence to verify the accuracy of information provided to them;

4. showing that they conducted a reasonable investigation into the information provided; and
5. demonstrating that they took corrective steps promptly once the misrepresentation was discovered.[53]

Liability is joint and several, with a right to recover contributions unless the court orders otherwise.[54]

Advisers and third parties

Shareholders will not typically have a direct cause of action, in contract or in negligence, against advisers to the corporation or other third parties.[55] However, shareholders of public issuers have a statutory claim against third parties who consent to the inclusion of their reports, opinions and statements in a takeover bid circular.[56] Third parties who do consent to their reports, opinions and statements being included in a takeover bid circular have statutory defences, including that they conducted reasonable due diligence, that they had no reasonable grounds to believe that there had been a misrepresentation and that the circular did not fairly represent their report, opinion or statement.[57]

Class actions and collective actions

Despite each Canadian province having legislation governing class proceedings, Canada-wide class proceedings are common and are coordinated through the Judicial Protocol for the Management of Multi-Jurisdictional Class Actions[58] between class counsel and provincial superior courts of the provinces in which proceedings are commenced and certified. It is also relatively common to see proceedings commenced in a single province's court on behalf of a national class. Class actions must be certified, with the court satisfied that the statutory certification criteria are met.[59]

Shareholder class actions are regularly brought by experienced plaintiff class action counsel on a contingency basis. While contingency fees must be approved by the court, typical contingency arrangements are around 30 per cent of any recovery (whether by judgment or through a settlement). However, the higher the recovery, the greater the risk Canadian courts will refuse to approve the full contingency amount.[60]

Insurance and indemnification

Insurance plays a vital role in M&A litigation. While corporate statutes entitle directors to be indemnified if they are ultimately determined to have acted in accordance with their fiduciary duties, most corporate by-laws give the corporation the discretion to indemnify directors or officers before any determination is made, supported by directors' and officers' (D&O) liability insurance.[61] Typical D&O policies provide for 'Side A' coverage, which protects the directors and officers where the corporation lacks sufficient funds to indemnify them, 'Side B' coverage, which is available to reimburse the corporation for amounts it pays as indemnification for directors and officers, and 'Side C' coverage,

which protects the corporation (for example, in the event of direct claims against the corporation). In addition to D&O policies, transactional insurance (such as representations and warranties insurance) is now fairly common in Canadian M&A transactions and has added complexity, with insurers now playing a central role in post-closing litigation.

Settlements

While parties are generally free to conduct and settle litigation as they see fit, once certified, a class proceeding cannot be discontinued, abandoned or settled without court approval. The court will consider a variety of factors, including weighing the advantages and potential prejudice to class members and other parties if all or some of the claims advanced are discontinued or abandoned, or, in the case of a settlement, whether the terms of a proposed settlement are in the best interests of the class members.

Other shareholder issues

Although courts and securities commissions frequently accommodate 'real-time' litigation (for example, through Toronto's specialised Commercial List, which expedites complex corporate and securities cases such as contested transactions and takeover bids), the overall pace of Canadian litigation is often slower than in the United States and other jurisdictions. Class actions, in particular, typically have protracted interlocutory disputes over whether leave should be granted and whether the claim should be certified. As at the time of writing, there are proposals to radically reform the Ontario rules of court to increase the speed and efficiency of the litigation process, as well as other (less radical) reforms in other provinces aimed at similar ends. It remains to be seen whether and to what extent these changes may impact how M&A disputes are litigated in practice.

Counterparty claims

Canadian courts recognise the right of sophisticated commercial parties to allocate transaction risk between themselves as they see fit and will hold the parties to their bargain. Compared to some jurisdictions, such as the United States, Canadian courts tend to adopt a more contextual approach to contractual interpretation rather than a strictly literal one.[62] Canadian contract law also recognises an underlying organising principle that requires the parties to a contract to act in good faith in performing their respective contractual obligations. While parties are entitled to act in their own economic self interest, they must still act honestly and not capriciously or arbitrarily.[63]

Common M&A claims and procedure

Commonly litigated claims include breach of representations and warranties claims, price-adjustment and earn-out disputes, the applicability of material adverse change or material adverse event clauses, and the enforceability of break fees. In addition, disputes often arise over the scope of covered losses, indemnity caps and buyer compliance with notice and mitigation obligations. Non-compete and non-solicit clauses are common in private M&A transactions and are frequently litigated, particularly where sellers re-enter

the market after closing. These clauses are presumptively enforceable in the context of the sale of a business if they are reasonable in scope, geography and duration, and protect a legitimate business interest.[64]

Contractual claims are advanced by way of a statement of claim or other originating process. Civil claims, such as breach of contract claims, require the successful party to prove their case on a balance of probabilities. In most cases involving a failed M&A transaction or a post-transaction claim for damages, each party will put forward expert accounting or valuation evidence in addition to undergoing documentary discovery and examinations for discovery (depositions). Unlike in the United States, parties do not have expansive rights to depose multiple witnesses in advance of trial.

Securities regulators and specialised commercial courts (such as the Toronto Commercial List and the Commercial Division of the Superior Court of Quebec) provide for relatively expedited procedures that allow disputes in live transactions to be determined in response to the deal timeline. Post closing disputes, however, may take several years to resolve, depending on the volume of documents, the length of discovery procedures, the number of anticipated witnesses, which typically include expert testimony, and the resolution of preliminary and pretrial issues.

Counterparty remedies

In most cases, the party in breach of its contractual obligations is liable to pay monetary damages, subject to any exclusions, limitations of liability or caps on quantum. Rescission may be available as an alternative remedy in appropriate circumstances (typically fraud) in the context of private M&A transactions. However, rescission is an equitable remedy and would be far more problematic, if not unavailable, where the target company is a public issuer.

The successful party to litigation is also entitled to recover a portion (but not all) of its legal expenses through an award of costs against the unsuccessful party (a loser-pays system). Canadian courts, unlike their US counterparts, have demonstrated a reluctance to award specific performance,[65] particularly in the context of M&A transactions.[66]

Counterparty defences

The target corporation (or in some cases, its former parent corporation) and its officers and directors are entitled to advance any defences available to them, including the purchaser's reliance on its own due diligence, as well as any carve-outs or other exculpatory provisions in the contract. The defendants to an action brought by the purchaser may advance any counterclaims against the purchaser as well as claims against third parties for contribution and indemnity to any damages proven by the purchaser.

Arbitration

Canada is a signatory to the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In addition, each Canadian jurisdiction has statutes governing domestic arbitration, including commercial arbitrations

that do not fall within the scope of the Model Law.[67] As a result, parties with a valid arbitration agreement will be required to arbitrate their disputes, and court proceedings brought in respect of a dispute falling within the scope of the arbitration agreement will be stayed.

Other counterparty issues

Mergers involving Canadian businesses that exceed prescribed party and transaction-size thresholds must comply with the notification regime under the Competition Act. Similarly, non-Canadians must comply with the Investment Canada Act. In either case, the timing to close a deal falling under the Competition Act, the Investment Canada Act, or both, must take into account the respective notification requirements and review periods, which can be up to 200 days and may require the parties to comply with conditions to obtain the necessary approvals.[68]

Cross-border issues

Canadian courts will respect the parties' proper choice of law governing the transaction documents as well as their legitimate choice to attorn to the exclusive jurisdiction of a foreign court. Canada is a signatory to the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and service of a foreign process on a Canadian resident can be made through the processes outlined in the Convention.

Canadian courts will not reconsider a foreign judgment on the merits if the foreign court properly exercised jurisdiction (for example, where a party has attorned to the foreign court's jurisdiction) or where there is a real and substantial connection between the foreign court, the action and the defendant. If the foreign court properly assumed jurisdiction and the Canadian defendant was properly served with the originating process, there are limited grounds on which a Canadian court will refuse to recognise a final and conclusive foreign judgment.[69]

Similarly, a Canadian court may assume jurisdiction over a dispute involving foreign defendants if the province or territory in which the action is brought has a real and substantial connection to the dispute[70] and the court concludes that there is no basis to decline jurisdiction in favour of another jurisdiction, such as a valid attornment clause to the exclusive jurisdiction of the courts in another jurisdiction.[71]

Outlook and conclusions

Recent trends in Canadian M&A include continued consolidation of Canadian corporations in key industry sectors, such as financial services, resource extraction and technology. Public company M&A transactions increasingly feature bidders employing activist shareholder strategies as a prelude to potential bids, underscoring the importance of robust governance structures and protections for boards.

Looking ahead, the themes that have shaped Canadian M&A over the past several years are expected to continue into the near term. Although deal volumes have remained steady, the value of Canadian M&A transactions continues to outpace public equity capital-raising, with the aggregate value of completed M&A activity again exceeding total proceeds from Canadian initial public offerings. This imbalance underscores the degree to which strategic buyers and private capital, including pension funds and private equity sponsors, continue to view acquisitions as a preferred pathway for growth and capital deployment.

Overall, the outlook for Canadian M&A remains cautiously optimistic. Market fundamentals, including available private capital, stable financing conditions and continued strategic consolidation in key sectors, support ongoing transaction activity. Nevertheless, heightened regulatory oversight, evolving governance expectations and an active litigation environment will require dealmakers to remain attentive to process, disclosure and stakeholder engagement. Participants who proactively manage these risks while remaining agile in execution will be best positioned to capitalise on opportunities in the Canadian market in the year ahead.

Claims data from representations and warranties insurers suggests that approximately one in five private M&A transactions result in a claim of some description. If this trend holds, a resurgence in private M&A transactions may also bring a surge in M&A litigation in the coming years.[72]

Acknowledegments

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Endnotes

1 Civil Code of Quebec, CLRQ Chapter CCQ-1991. Parties conducting business within the Province of Quebec should also be aware of matters governed under the Charter of the French Language CLRQ Chapter C-11 and other laws of mandatory application. ^ Back to section

2 The Canadian Securities Administrators is an umbrella organisation through which provincial and territorial securities regulators develop, coordinate and harmonise securities regulation, typically through national policies, national instruments, multilateral policies and multilateral instruments. ^ Back to section

3 National Instrument 62-104 –Take-Over Bids and Issuer Bids(NI 62-104) and National Policy 62-203 – Take-Over Bids and Issuer Bids(NP 62-203). ^ Back to section

4 National Instrument 51-102 – Continuous Disclosure Obligations (NI 51-102), National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer (NI 54-101) and National Instrument 58-101 – Disclosure of Corporate Governance Practices (NI 58-101). ^ Back to section

5 See, for example, for reporting issuers, National Policy 62-202 – Take-Over Bids – Defensive Tactics (NP 62-202). ^ Back to section

6 Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions (MI 61-101). ^ Back to section

7 Competition Act, RSC 1985, Chapter C-34, Sections 109–110. ^ Back to section

8 id., Section 92. ^ Back to section

9 Investment Canada Act, RSC 1985, Chapter 28 (1st Supplement). ^ Back to section

10 id., Sections 14, 15, 25.2. ^ Back to section

11 *Jaguar Financial Corporation v. Alternative Earth Resources Inc*, 2016 BCCA 193 at paragraphs 179, 186. ^ Back to section

12 See *BCE Inc v. 1976 Debentureholders*, 2008 SCC 69 at paragraphs 72–84. These factors include: (1) commercial practice; (2) the nature of the corporation; (3) relationships between shareholders and other corporate actors (particularly in the case of closely held corporations); (4) past corporate practice (taking into account valid commercial reasons for past practices having changed); (5) steps shareholders could have taken to protect themselves from the prejudice alleged; (6) representations and agreements between the corporation and its stakeholders (such as shareholder agreements or public disclosures and public statements, such as a prospectus, offering circulars and management discussion, and analysis statements or financial statements); and (7) the fair resolution of competing interests (those of the corporation and its stakeholders, or between stakeholders). ^ Back to section

13 id., at paragraphs 62, 68. See also *Shefsky v. California Gold Mining Inc*, 2016 ABCA 103 at paragraph 37, aff'g 2014 ABQB 730. ^ Back to section

14 *Jaguar Financial Corporation v. Alternative Earth Resources Inc*, 2016 BCCA 193 at paragraphs 179, 186. ^ Back to section

15 Canadian corporate statutes set out when shareholders and other 'complainants' may initiate or assume control of litigation on the corporation's behalf if the directors decline to do so. Leave of the court is required to bring a derivative claim. Courts act as gatekeepers and will grant leave only where the statutory conditions are met, including that adequate notice is given to the board of directors, the complainant is acting in good faith and will diligently pursue the litigation, and the proposed litigation appears to be in the best interests of the corporation. ^ Back to section

16 Canada Business Corporations Act, RSC 1985, Chapter C-44 (CBCA), Sections 124(4), 240; Business Corporations Act, RSO 1990, Chapter B.16 (OBCA), Sections 136(4.1), 247; Business Corporations Act, SBC 2002, Chapter 57 (BCBCA), Sections 160, 233; Business Corporations Act, RSA 2000, Chapter B-9 (ABCA), Sections 124, 241. ^ Back to section

17 *Rea v. Wildeboer*, 2015 ONCA 373. ^ Back to section

18 *Guarantee Co. of North America v. Gordon Capital Corp*., 1999 CanLII 664 (SCC) at paragraph 47; *Ehli v. Lamanator Coatings Ltd*, 2024 ABKB 339;*Mooney v. Orr,* 1995 CanLII 3312 (BCSC). ^ Back to section

19 Securities Act, RSO 1990, Chapter S.5 (OSA), Sections 104, 131(1)–(2); Securities Act, RSBC 1996, Chapter 418 (BCSA), Sections 114, 132(1)–(2); Securities Act, RSA 2000, Chapter S-4 (ASA), Sections 179, 205(1)–(2). ^ Back to section

20 OSA, Section 1(1) 'misrepresentation'; BCSA, Section 1(1) 'misrepresentation'; ASA, Section 1 'misrepresentation'. The prescribed forms for a takeover bid circular (Form 62-504F1 and Form 62-504F3) require disclosure of matters that might reasonably be expected to affect the decision of a target security holder to accept or reject an offer. See *Rooney v. ArcelorMittal SA,* 2016 ONCA 630 at paragraph 67. ^ Back to section

21 OSA, Section 138.2(c), unless falling within the exemptions in General, RRO 1990, Regulation 1015, Section 252; BCSA, Section 140.2(c), unless falling within the exemptions in Securities Rules, BC Regulation 194/97, Section 185.3; ASA, Section 211.02(c), unless falling within the exemptions in Alberta Securities Commission Rules (General), Section 26. ^ Back to section

22 *See Rooney v. ArcelorMittal SA*, 2016 ONCA 630 at paragraphs 62–78. ^ Back to section

23 See OSAPart XXIII.1, Sections 138.1, including definition of 'liability limit', 138.2–138.7, 138.8 (procedural requirements) and 138.14 (limitation period). ^ Back to section

24 Privately held corporations are exempt from most securities laws. A private corporation is a corporation that is closely held by a small group of non-public investors (not more than 50 securities holders, such as family, friends and business associates or accredited investors) where the securities are subject to restrictions on transfer that are in the corporation's constating documents or a shareholders agreement; see National Instrument 45-106 – Prospectus Exempt Distributions (NI 45-106), Section 2.3–2.5. Similarly, 'non-reporting issues' are exempt from the Take-over Bid Rules under securities laws where they meet the definition of 'non-reporting issuer' and where there is no public market for the target's securities and there are no more than 50 securities holders at the start of the bid; see National Instrument 62-104 – Take-Over Bids and Issuer Bids (NI 62-104), Section 4.3. ^ Back to section

25 See National Policy 12-201 – Mutual Reliance Review System for Exemptive Relief Applications Implementation (NP 12-201), Part 3. ^ Back to section

26 *820099 Ontario Inc v. Harold E Ballard Ltd* [1991] OJ No. 266 at paragraph 140 (Gen Div), aff'd [1991] OJ No. 1082 (Div Ct); *Naneff v. Con-Crete Holdings Ltd* (1995), 1995 CanLII 959 (ONCA). ^ Back to section

27 *CW Shareholdings Inc v. WIC Western International Communications*, 1998 CanLII 14838 (ONSC). ^ Back to section

28 See, for example, CBCA, Sections 183, 190(1)(c) (other than in the case of a short- form amalgamation between a parent and a subsidiary); OBCA, Sections 176, 185(1)(c); BCBCA, Sections 238(1)(b), 272; ABCA, Sections 183(1), 191(1)(c). ^ Back to section

29 See, for example, CBCA, Sections 188, 190(1)(d); OBCA, Sections 181, 185(1)(d); BCBCA, Sections 238(1)(f), 309; ABCA, Sections 189, 191(1)(d). ^ Back to section

30 See, for example, CBCA, Sections 189(3), 190(1)(e); OBCA, Sections 184(3), 185(1)(e); BCBCA, Sections 238(1)(e), 301(5); ABCA, Sections 190(1), 191(1)(e). ^ Back to section

31 CBCA, Section 190(1)(a); OBCA, Section 185(1)(a); BCBCA, Section 238(1)(a); ABCA, Section 191(1)(a). ^ Back to section

32 See, for example, CBCA, Sections 190(1)(f), 194 (class vote in a squeeze out transaction, which must also comply with securities laws). ^ Back to section

33 See, for example, id., Section 176(1) (which permits shareholders of the affected class of shares to vote as a separate class unless the articles specifically provide that the shares do not have the right to vote in the instance of Sections 176(1)(a)–(b), (e), 190(2)). ^ Back to section

34 See id., Section 190(5). Note also that a dissenting shareholder cannot partially dissent (i.e., to retain some shares): CBCA, Section 190(4); see also OBCA, Section 185(5)–(6); BCBCA, Sections 238, 242; ABCA, Section 191(4)–(5). ^ Back to section

35 CBCA, Section 190(11); OBCA, Section 185(14); BCBCA, Section 246; ABCA, Section 191(14)–(15). ^ Back to section

36 Note that CBCA, Section 190(26) prohibits a corporation from paying dissenting shareholders if the directors determine that there are reasonable grounds to believe that the corporation is or would, after the payment is made, become unable to pay its liabilities as they become due or that the realisable value of its assets would be less than the aggregate of its liabilities. See also OBCA, Section 185(30); BCBCA, Section 245(5); ABCA, Section 191(20). ^ Back to section

37 See CBCA, Section 206; OBCA, Section 187; BCBCA, Section 300; ABCA, Section 194. ^ Back to section

38 OSA, Section 104; BCSA, Section 114; ASA, Section 179. ^ Back to section

39 *Riot Platforms, Inc v. Bitfarms Ltd*., 2024 ONCMT 27; *Re Greenfire Resources Ltd*., 2025 ABASC 104. ^ Back to section

40 OSA, Section 127(1); BCSA, Section 89(1); ASA, Section 198(1); *Committee for the Equal Treatment of Asbestos Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paragraphs 39–45, 49; see also*Re Bison Acquisition Corp*, 2021 ABASC 188 at paragraph 73; *Riot Platforms, Inc v. Bitfarms Ltd,* 2024 ONCMT 27 at paragraph 68. ^ Back to section

41 OSA, Section 105. Note that, like the oppression remedy, securities regulator intervention under OSA Section 105 is not intended to be punitive but is intended to remedy the alleged misconduct. See *Echo Energy Canada Inc. v. Challenge Gas Holding AB*, 2008 CanLII 63183 (ONSC) at paragraph 88. ^ Back to section

42 *Rea v. Wildeboer*, 2015 ONCA 373. ^ Back to section

43 *Cineplex v. Cineworld*, 2021 ONSC 8016 at paragraphs 166–168. In this case, the shareholders had approved the transaction. The Ontario court declined to address the debate over whether a target corporation can sue to recover shareholder losses (specifically, the consideration that would have been paid to its shareholders in a failed merger) either by following *Consolidated Edison Inc v. Northeast Utilities*, 426 F.3d 524 (2d Cir 2005) or on the principle of 'transferred loss' in *Lowick Rose LLP v. Swynson Ltd.* [2017] UKSC 32. ^ Back to section

44 OSA, Section 131(1), (2); BCSA, Section 132(1)–(3); ASA, Section 205(1)–(2). ^ Back to section

45 OSA, Section 131(9); BCSA, Section 132(11); ASA, Section 205(9). ^ Back to section

46 *Maple Leaf Foods Inc. v. Schneider Corp*, 1998 CanLII 5121 (ONCA); *Peoples Department Stores Inc (Trustee of) v. Wise*, 2004 SCC 68; *BCE Inc v. 1976 Debentureholders*, 2008 SCC 69 at paragraphs 40, 84–88; *UPM-Kymmene Corp v. UPM-Kymmene Miramichi Inc*, 2002 CanLII 49507 at paragraph 153 (ONSC), aff'd 2004 CanLII 9479 (ONCA). ^ Back to section

47 The Delaware law 'enhanced scrutiny' and 'proper purpose' standards were considered and rejected in favour of the business judgement rule in 1998 by the Ontario Superior Court in *CW Shareholdings Inc v. WIC Western International Communications Ltd*, 1998 CanLII 14838 (ONSC) and later that year by the Ontario Court of Appeal in *Maple Leaf Foods Inc v. Schneider Corp*, 1998 CanLII 5121 (ONCA), a position subsequently approved by the Supreme Court of Canada in *Peoples Departments Stores Inc (Trustee of) v. Wise*, 2004 SCC 68 at paragraph 65; *Kerr v. Danier Leather Inc*, 2007 SCC 44 at paragraph 54; and *BCE Inc v. 1976 Debentureholders*, 2008 SCC 69 at paragraph 40. The application of the business judgement rule, however, requires courts to scrutinise the board's decision-making process to determine whether the directors acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the corporation. This will include scrutiny of the purported 'business purpose' of the actions in question; see, for example, *Unique Broadband Systems Inc (Re)*, 2014 ONCA 538 at paragraph 72, where the Ontario Court of Appeal found that the board breached its fiduciary duties because it was clear that it had engaged in conduct with no legitimate business purpose (and as a result, the business judgement rule did not apply). Canadian courts have endorsed the use of independent committees of outside (non-management) directors and independent outside legal and financial advisers where the target board is considering a potential change of control transaction; see *Maple Leaf Foods Inc v. Schneider Corp*, 1998 CanLII 5121 (ONCA); *Sterling Centrecorp Inc (Re)*, 2007 CanLII 32675 (ONSC). ^ Back to section

48 *BCE Inc v. 1976 Debentureholders*, 2008 SCC 69 at paragraph 142. ^ Back to section

49 See *Neo Material Technologies Inc. et al*, 2009 ONSEC 32 at paragraph 105, where the Ontario Securities Commission accepted that the shareholder rights plan adopted was a valid exercise of the board's business judgement, in contrast to the 2024 case, *Riot Platforms, Inc v. Bitfarms Ltd*, 2024 ONCMT 27 at paragraphs 75–76, where the Ontario Capital Markets Tribunal declined to defer to the target board's business judgement in adopting an 'off-market' 15 per cent trigger for a shareholder rights plan in anticipation of a hostile bid. The business judgement rule was considered by the Alberta Securities Commission several months later in *Re Greenfire Resources*, 2025 ABASC 104 at paragraphs 261–264, where the Alberta Securities Commission agreed that the business judgement rule was a relevant consideration but concluded that the facts demonstrated that the challenged shareholder rights plan, which retroactively affected a private transaction, fell outside the range of reasonable options. ^ Back to section

50 OSA, Section 131(4); BCSA, Section 132(4); ASA, Section 205(4). ^ Back to section

51 OSA, Section 132.1; BCSA, Section 131(8.1); ASA, Section 205.1(1). ^ Back to section

52 OSA, Section 131(4); BCSA, Section 132(4); ASA, Section 205(4). ^ Back to section

53 OSA, Section 131(5); BCSA, Section 132(5); ASA, Section 205(5). ^ Back to section

54 OSA, Section 131(8); BCSA, Section 132(9)–(10); ASA, Sections 205(8), (10.1). ^ Back to section

55 See, for example, *Hercules Managements Ltd. v. Ernst & Young*, 1997 CanLII 345 (SCC). ^ Back to section

56 OSA, Section 131(1)(b); BCSA, Section 132(1)(b); ASA, Section 205(1)(b). ^ Back to section

57 OSA, Section 131(5)(c)–(d), 131(6) (no reasonable grounds to believe there was a misrepresentation and reasonable investigation defences); BCSA, Sections 132(5)(c)–(d), 132(6); ASA, Section 205(5)(c)–(d), (6). ^ Back to section

58 CBA Resolution 18-03-A, 'Canadian Judicial Protocol for the Management of Multi-jurisdictional Class Actions and the Provision of Class Action Notice' (2018). ^ Back to section

59 The statutory criteria are: (1) the pleadings disclose a cause of action; (2) there is an identifiable class of two or more persons who would be represented by the representative plaintiff; (3) the claims or defences of class members raise common issues; (4) a class proceeding is the preferable procedure to resolve the common issues; and (5) the representative plaintiff would fairly and adequately represent the class interests, has a workable litigation plan and does not have a conflict of interest with other class members. See, for example,Class Proceedings Act, 1992, SO 1992, c 6, Section 5(1); Class Proceedings Act, RSBC 1996, c 50, Section 4(1); Class Proceedings Act, SA 2003, c C-16.5, Section 5(1); *King & Dawson v. Government of PEI*, 2020 PECA 13 at paragraphs 40–41, citing *Western Canadian Shopping Centres Inc v. Dutton*, 2001 SCC 46 at paragraph 48, and *Hollick v. Toronto (City)*, 2001 SCC 68 at paragraph 16. ^ Back to section

60 *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628. ^ Back to section

61 CBCA, Section 124(6); OBCA, Section 136(4.3); BCBCA, Section 165; ABCA, Section 124(4). ^ Back to section

62 *Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53. ^ Back to section

63 *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 at paragraphs 82–84. ^ Back to section

64 See, for example, *Dr. C. Sims Dentistry Professional Corporation v. Cooke*, 2024 ONCA 388, at paragraphs 11–13, 16. ^ Back to section

65 *UBS Securities Canada, Inc v. Sands Brothers Canada, Ltd*, 2009 ONCA 328 at paragraphs 99–103. See also *GATX Corp v. Hawker Siddeley Canada Inc.*, 1996 CanLII 8286 (ONSC) at paragraphs 151–158, for an example of enforcing a right of first refusal and ordering specific performance as a remedy to oppression. ^ Back to section

66 See, for example, *Cineplex v. Cineworld,* 2021 ONSC 8016 at paragraphs 156–157; following a failed acquisition, the court rejected the acquiror's argument that specific performance was an appropriate remedy, instead awarding the target expectation damages arising from lost synergies and noting that 'the usual measure of damages in a contract case is expectation damages'. ^ Back to section

67 See, for example, International Commercial Arbitration Act, 2017, SO 2017 Chapter 2, Schedule 5; Arbitration Act, 1991, SO 1991, Chapter 17 (Ontario). ^ Back to section

68 Under the Competition Act,parties must account for the 30-day waiting period, beginning when the Commissioner of Competition receives the required notice, as well as the potential for the Commissioner to impose an additional 30-day waiting period and conditions (through the issuance of a supplementary information request). Parties often seek an Advanced Ruling Certificate (ARC) from the Competition Bureau to mitigate closing risk. However, even where an ARC is obtained, the Commissioner may challenge a substantially completed merger before the tribunal for a limited period of time. The Investment Canada Act requires parties to notify the director no later than 30 days after completion, and the director then has 45 days from receipt to determine whether further national security review of the investment is required. More stringent notification and review requirements apply for certain transactions, such as those exceeding prescribed enterprise value thresholds or involving a 'cultural business'. In these cases, pre-closing notification is required and the Minister of Innovation, Science and Industry first assesses whether the acquisition would likely constitute a net benefit to the Canadian economy. Transactions involving activities tied to national security, such as critical minerals, sensitive technology sectors or critical infrastructure, are also subject to review. In all cases requiring stricter notification, the Minister must determine whether the acquisition is injurious to national security. This review can take up to 200 days. ^ Back to section

69 *Beals v. Saldanha*, 2003 SCC 72. Canadian courts will not recognise or enforce judgments that enforce penal or taxation statutes, nor will they recognise judgments that are contrary to public policy (in the sense that the foreign judgment is based on laws contrary to the fundamental morality of the Canadian legal system), judgments obtained by fraud, judgments in which the foreign proceedings were contrary to Canadian notions of fundamental justice (such as a lack of judicial independence or lack of natural justice) or judgments that are under appeal. Slightly different considerations apply in Quebec. Canadian courts will also render assistance in connection with certain types of foreign proceedings, such as bankruptcy or insolvency proceedings, and may do so for the enforcement of certain types of orders, such as *Mareva* injunctions or foreign freezing orders. ^ Back to section

70 Presumptive jurisdiction can be established through one or more connecting factors to the jurisdiction; however, presumptive jurisdiction can be rebutted by showing that these connecting factors are remote or weak and, in the circumstances, do not establish a real and substantial connection between the parties, subject matter of the action and the court; *Sinclair v. Venizia Turismo*, 2025 SCC 27. ^ Back to section

71 *Club Resorts Ltd v. Van Breda*, 2012 SCC 17; *Chevron Corp v. Yaiguaje*, 2015 SCC 42. British Columbia has specific legislation governing when it can assume jurisdiction over a proceeding as well as for the transfer of proceedings to a court outside the province. ^ Back to section

72 Euclid Transactional, in its 'Global Representations & Warranties Insurance Claims Study 2024', reports that from July 2016 to June 2024, it placed 6,244 policies and received 1,373 claims. Liberty Global Transaction Solutions, in its '2024 Claims Briefing', reported having paid out C$256 million in insured losses, largely arising from litigation following deals during the M&A 'boom' in 2021. ^ Back to section

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