

Securities Litigation



Overview

In the current business climate, it is critical that your securities litigation counsel have the experience and national reach to help your organization minimize its exposure to civil and regulatory litigation risks and to defend its interests before courts and tribunals, should the need arise.

The Blakes Securities Litigation team is at the forefront of Canada's most significant securities disputes, including primary- and secondary-market securities class actions, contested transactions, financial products litigation, regulatory enforcement matters and investigations. Our leading lawyers focus almost exclusively on securities litigation. No matter how complex or novel the issue may seem, chances are we have encountered it before.

We provide a broad range of litigation and risk-management services, including advising and representing clients with respect to litigation avoidance and preparedness, internal and regulatory investigations, compliance, and all stages of civil and regulatory proceedings. As securities disputes increasingly span multiple

jurisdictions, our national team coordinates to represent clients in proceedings across Canada, and we regularly work with U.S. and international firms. Given the strength of our regulatory and civil practices, our securities litigators are particularly adept at managing the challenges associated with multi-faceted disputes that combine civil and regulatory elements.

Blakes securities litigators work closely with members of the Firm's leading Capital Markets practice to keep clients apprised of new legislative and case law developments so that potentially contentious matters can be identified and managed before they escalate.

However, some disputes are unavoidable. When securities litigation ensues, our clients benefit from our strategic insights and advocacy skills. Our nationally recognized team of securities litigators have successfully defended cases at all levels of court, including the Supreme Court of Canada and regularly appear before securities regulators across the country.

Blakes Means Business



Securities Class Actions Defense

Blakes has one of the most robust securities class-action defence practices in Canada. Our lawyers have experience representing issuers, financial institutions, auditors, underwriters, fund managers, dealers, directors and executive officers at all levels of court. Our emphasis on fresh thinking and creative solutions has allowed us to set important precedents in this rapidly developing area, including before the Supreme Court of Canada.

Our national team takes a comprehensive approach. We advise clients about securities class-action litigation readiness and avoidance, risk management and insurance, and internal investigations, all factors that can help to reduce class-action exposure before claims materialize. When claims do arise, we engage in thorough planning with our clients to develop a strategy that is aligned with their business objectives and tolerance for risk.

Securities class-action litigation often arises within a broader nexus of legal activity that can include insolvency and regulatory proceedings, transactions, and insurance and employment disputes, often across multiple jurisdictions. Our sophisticated cross-disciplinary teams are adept at managing this complexity. Lawyers in diverse practice areas in our offices across the country coordinate seamlessly to deliver integrated solutions. We have strong relationships with top U.S. and international firms and regularly coordinate with them to deliver global resolutions.

M&A Litigation

Blakes has one of the largest and most active mergers and acquisitions practices in Canada. An important aspect of our M&A practice is the support provided by the Firm's securities litigators who work with clients and the transactional team from the earliest stages of an M&A deal to identify and address potential litigation issues.

Blakes securities litigators have extensive experience in handling hostile take-over litigation before the courts and provincial securities commissions and in going-private transactions, opposed arrangement transactions, and dissent and appraisal proceedings. Whether we are advising the company, the board of directors, a special committee or a related third party such as an investment banker, Blakes litigators understand the role that litigation can play in shaping the outcome of a contested M&A transaction.

Our Securities Litigation group also has significant experience handling associated class actions involving claims for breach of fiduciary duty and oppression. Blakes also represents vendors or sellers post-closing in disputes involving alleged breaches of representations and warranties in asset or share purchase agreements.



Financial Products Liability

There has been dramatic growth in the variety and popularity of financial products, ranging from index-tracking exchange-traded funds to complex actively managed fund products. The market for such products has expanded beyond sophisticated and institutional investors, and financial products are becoming increasingly popular with retail investors.

These developments have prompted an increase in both civil claims and regulatory proceedings relating to financial products, including allegations related to the design, establishment, marketing, distribution and operation of financial products.

Blakes is a market leader in the defence of claims relating to financial products. We act for clients across the financial product industry, from financial product manufacturers, managers and trustees to distributors and client-facing advisors and salespersons. We have defended claims relating to product design and management, product sales and compensation, and robo-advisor/self-directed account disputes. We also regularly act for clients in their interactions with financial product regulators, including at the approval stage, as well as enforcement investigations and proceedings.

Directors' & Officers' Liability

Directors and officers of Canadian corporations may face personal liability and even regulatory or criminal prosecution for actions taken or decisions made in the course of their duties in a wide and evolving range of circumstances. Fortunately, corporations can indemnify directors and officers for most exposures they may face, provided they have not engaged in intentional misconduct.

Blakes has extensive experience acting in disputes across the country in which directors' and officers' personal liability is at issue. These include securities class actions, oppression claims, derivative actions, indemnification disputes and insolvency proceedings. We also provide advice to corporate clients and individual directors and officers about indemnity agreements, directors' and officers' liability insurance coverage and governance practices.



Internal Securities Investigations

Red flags warning of securities litigation or regulatory risks are often uncovered before a call from a regulator or a statement of claim arrives. Whether discovered by way of a whistleblower report, compliance review, customer or employee complaint, or internal audit, a company that learns of a potential risk needs to consider whether and how to investigate that risk and address it.

The Blakes Securities Litigation team assists companies, boards of directors and senior officers in managing these crises, including by determining whether and when to strike a special committee; designing, guiding and conducting internal investigations; and advising about any regulatory and litigation risks that are discovered. We are frequently called on to investigate and advise on matters relating to market integrity, accounting and securities fraud, insider trading, illegal distributions, supervision issues, sales practices, and unsuitable trading allegations. In conducting internal investigations, we work closely with directors, executives, in-house counsel, and forensic and accounting experts.

Blakes securities litigators know that early investigation and response are the best protection for companies facing potential financial exposure and reputational risks. We have extensive experience in guiding companies through these crises and, when appropriate, assisting in self-reporting to regulators and negotiating resolutions with them.

Regulatory Investigations & Enforcement Proceedings

Our Securities Litigation team has extensive experience representing clients facing investigations and enforcement proceedings commenced by provincial securities commissions and self-regulatory organizations, including the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association. Our lawyers regularly represent clients involved in regulatory investigations that include cross-border issues and related investigations involving foreign regulators such as the Securities and Exchange Commission.

Blakes has successfully represented issuers, private corporations, financial institutions, audit firms, investment dealers and individuals in regulatory proceedings and investigations involving allegations of contraventions of securities laws or industry rules, including matters relating to market integrity, securities fraud, insider trading, illegal distributions, supervision issues and unsuitable trading.

At Blakes, we recognize that regulatory investigations and enforcement proceedings can be destabilizing, even when successfully defended. Our team works to achieve client-focused resolutions through advocacy and negotiation. We also coordinate closely with experts in other practice areas such as our Capital Markets team to ensure our clients receive the most informed and efficient strategic advice.

Representative Matters

- **Celestica Inc.** in its successful appeal before the Supreme Court of Canada to uphold the limitation period for bringing a statutory secondary market securities class action in Trustees of the *Millwright Regional Council of Ontario Pension Trust Fund v. Celestica Inc. et al.* The decision makes several important observations relating to the interplay between the *Ontario Securities Act* and the *Class Proceedings Act*.
- **BDO LLP** in successfully defeating certification of a proposed investment fund class action. *Whitehouse v. BDO* represents an important development in the law regarding auditors' duties of care to investors (subject to appeal). Blakes also represented BDO LLP in related enforcement proceedings.
- **The lead underwriters** in securities class actions in Ontario and Quebec against HEXO Corp., a cannabis producer. The plaintiff alleges that HEXO made material misrepresentations in its primary and secondary market disclosures.
- **A major Canadian financial institution** in a proposed class action alleging that mutual fund trustees and managers improperly paid a portion of the commissions collected on mutual funds to "order-execution only" brokers, while those brokers did not provide any advice or services to investors, in contrast to full service brokerages.
- **The Stars Group Inc. ("TSGI")** in successfully defending an urgent proceeding brought by certain investment funds to prevent the conversion of convertible preferred shares in the capital of TSGI into common shares worth more than \$2.3 billion.
- **Horizons ETFs Management (Canada) Inc.** in defending a securities class action seeking damages for the decrease in value of units of Horizons' BetaPro S&P 500 VIX Short-Term Futures Daily Inverse ETF.
- **KPMG** in its role as auditor to CannTrust in proposed securities class action involving claims that misrepresentations with respect to unlicensed growing and storage of cannabis caused resulted in shareholder losses.
- **Olympia Trust Company** in seven class actions against real estate development and financing companies and other related parties in respect of syndicated mortgage investments in different real estate development projects in Ontario and Alberta. Blakes succeeded in having certification dismissed in one of the actions, which dismissal was upheld on appeal. The other actions are at the pleading stage.

Awards & Recognition

Blakes Securities Litigation lawyers are consistently recognized as leaders in the following publications and awards:

- *Chambers Canada: Canada's Leading Lawyers for Business*
- *Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms and Attorneys – Class Actions, General Commercial Litigation, Securities Litigation and White Collar Crime*
- *Benchmark Canada (2016): Securities Firm of the Year The Canadian Legal Expert Directory*
- *The Expert/American Lawyer Guide to the Leading 500 Lawyers in Canada*
- *The Canadian Legal Expert Directory (2013-2020): Repeatedly Recommended – Securities Litigation*
- *The Expert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada*
- *Benchmark Canada: 40 & Under Hot List and Top 50 Women in Canada*
- *The Best Lawyers in Canada – Corporate, Commercial Litigation and Securities Litigation*
- *Canadian Legal Expert Directory 2019 – Corporate, Commercial Litigation and Securities Litigation*

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