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# Secondary market liability in Canada: securities class actions

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Investors, issuers and other stakeholders in Canada's capital markets should be aware that all Canadian provinces and territories have recently amended their securities statutes to contain provisions that create civil liability for secondary market misrepresentation. Investors who purchase an issuer's securities on the secondary market may now pursue a statutory claim against the issuer, its directors and officers, and other parties for any:

- Misrepresentations in the issuer's continuous disclosure documents or oral public statements.
- Failure to make timely disclosure of a material change.

The enactment of this statutory regime has resulted in a marked increase in the number of securities class actions in Canada. According to a 7 February 2012 report from NERA Economic Consulting, a total of 35 proposed secondary market liability class actions have been filed since the regime was first introduced in Ontario in 2005. These cases accounted for two-thirds of all securities class actions filed between 2008 and 2011.

With secondary market liability quickly becoming a prominent area of securities litigation, this article provides:

- An overview of the policy rationale behind the new statutory regime.
- An examination of the regime's key features.
- An analysis of the case law that has developed around the provisions so far.

## REASONS FOR THE INTRODUCTION OF SECONDARY MARKET LIABILITY

The vast majority of securities trades in Canada occur on the secondary market. However, until recently, there was no statutory cause of action available to investors purchasing securities on the secondary market. Only primary market purchasers of securities offered by a prospectus, offering memorandum, or circular were afforded statutory remedies. There was also no statutory civil liability for misrepresentations contained in an issuer's continuous disclosure documents (such as the annual and quarterly financial statements, press releases and material change reports) even though these were the main sources of information on which most investors based their trading decisions.

Historically, investors purchasing securities on the secondary market could pursue only common law claims, typically for negligent misrepresentation. These remedies proved inadequate, however. First, a claim in negligent misrepresentation required proof that the investors actually relied on the misrepresentation in trading the issuer's securities. This typically raised individual issues rather than common issues, making it extremely difficult for investors to proceed by class action. Second, it was difficult for secondary market investors to establish a duty of care, principally owing to concerns over indeterminate liability on the part of the issuers and other potential defendants, such as underwriters or auditors.

To address these problems, all Canadian provinces and territories recently amended their securities legislation to allow secondary market investors to claim damages for misrepresentations in an issuer's continuous disclosure documents or public statements without requiring proof of a duty of care or reliance. Ontario introduced a statutory regime for secondary market liability in 2005, while the other jurisdictions followed suit from 2006 through to 2008 (*see below, Features of the statutory regime for secondary market liability*).

The purpose of creating a statutory regime for secondary market liability is two-fold:

- It makes recovery of damages much easier for secondary market investors because, without having to prove a duty of care or actual reliance, they can usually meet the conditions necessary to pursue their claims by class action.
- It deters issuers from breaching their continuous disclosure obligations under securities legislation by imposing civil liability.

A similar statutory scheme for secondary market liability was introduced in the US in 2002, with the passage of the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745. However, the Canadian regime has a unique feature: the claimant must obtain leave of the court before commencing a secondary market liability claim (*see below, Features of the statutory regime for secondary market liability: The leave requirement*).

## FEATURES OF THE STATUTORY REGIME FOR SECONDARY MARKET LIABILITY

This section provides an overview of the key features of the new statutory regime for secondary market liability. It concentrates on the Ontario legislative scheme, as all other provinces and territories in Canada have modelled their secondary market liability provisions very closely after those in Ontario.

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### Branches of liability

Ontario's statutory scheme for secondary market liability is contained in Part XXIII.1 of the Securities Act, R.S.O. 1990, c. S.5 (Securities Act). It applies to the securities of a "responsible issuer", which is defined as:

- A reporting issuer (that is, an issuer that has offered shares to the public and is subject to continuing disclosure obligations) in Ontario.
- Any other issuer that has a real and substantial connection to Ontario with securities that are publicly traded.

The Act imposes civil liability for the following (*section 138.3, Securities Act*):

- A misrepresentation in a document released by a responsible issuer.
- A misrepresentation in a public oral statement made on behalf of a responsible issuer that relates to the responsible issuer's business or affairs.
- A misrepresentation in a document or public oral statement issued by an "influential person" which relates to a responsible issuer. An influential person is:
  - a control person of the responsible issuer (that is, a company or person that holds a sufficient number of voting rights to materially affect the control of the issuer);
  - a promoter;
  - an insider who is not a director or officer of the responsible issuer; or
  - an investment fund manager, if the responsible issuer is an investment fund.
- A failure to make timely disclosure of a material change as required by securities law.

### Who can sue?

If there is a misrepresentation in a document or public oral statement, a claim for damages can be made by any person who buys or sells securities from the time the misrepresentation was made until it was corrected.

If there is a failure to make timely disclosure of a material change, a claim for damages can be made by any person who buys or sells securities between the moment the material change was required to be disclosed and the moment it was eventually disclosed.

### Who can be sued?

If there has been a misrepresentation in a document or public oral statement, or a failure to make timely disclosure, then a claim for damages can be brought against:

- The responsible issuer.
- Other parties who may have played a role in the document, public oral statement, or failure to make timely disclosure, such as:
  - the responsible issuer's directors and officers;
  - influential persons;
  - experts (where the misrepresentation was contained in an expert report that was included, summarised or quoted in the document or public oral statement).

### Burden of proof

**Misrepresentation.** The statutory scheme for secondary market liability distinguishes between a misrepresentation contained in a "core document" and a "non-core document". The legislation provides an exhaustive list of what core documents are. They include:

- Prospectuses.
- Circulars.
- Management's Discussion and Analysis (MD&As).
- Annual information forms.
- Annual and interim financial statements.
- A material change report, where the defendant is:
  - a responsible issuer;
  - an officer of the responsible issuer;
  - an investment fund manager or an officer of an investment fund manager, where the responsible issuer is an investment fund.

To succeed on a statutory claim for misrepresentation in a core document, the claimant must show only that there was a misrepresentation in the document.

However, for non-core documents or public oral statements, the claimant must show not only that there was a misrepresentation, but that one of the following applies:

- The defendant knew that there was a misrepresentation at the time that the document was released or public oral statement was made.
- The defendant deliberately avoided acquiring knowledge that the document or public oral statement contained a misrepresentation at or before the time that the document was released or the public oral statement was made.
- The defendant engaged in gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

**Failure to make timely disclosure.** If the claim relates to an alleged failure to make timely disclosure, then liability attaches to the responsible issuer and its officers (or, if the responsible issuer is an investment fund, to the investment fund manager and its officers). For all other defendants, the claimant must show that one of the following applies:

- The defendant knew of the change and that the change was a material change at the time that the failure to make timely disclosure first occurred.
- The defendant deliberately avoided acquiring knowledge of the change or that the change was a material change at the time or before the failure to make timely disclosure first occurred.
- The defendant engaged in gross misconduct in connection with the failure to make timely disclosure.

### Defences

Section 138.4 of the Securities Act provides various statutory defences against a claim of secondary market liability. For example, if the defendant can establish that the claimant had knowledge of the misrepresentation or the failure to make timely disclosure at the time it purchased or sold the responsible issuer's securities, then there is a complete defence to a claim of secondary market liability (*section 138.4(5), Securities Act*).

The most notable defence, however, is the "reasonable investigation" defence under section 138.4(6) of the Securities Act. The defendant is not liable for secondary market liability if it can establish that, before the release of the document or public oral statement (or the failure to make timely disclosure first occurred), the defendant:

- Conducted a reasonable investigation.
- Had no reasonable grounds to believe that there either:
  - was a misrepresentation at the time the document or public oral statement was issued; or
  - would be a failure to make timely disclosure.

**Limits on liability**

One of the policy arguments against secondary market liability was that it would expose the defendants to indeterminate liability even if the misrepresentation or failure to make timely disclosure was minor or inadvertent. Such liability could be grossly disproportionate to the seriousness of the defendants' misconduct. This policy concern typically made it impossible for common law claims to establish a duty of care owed by issuers to secondary market purchasers (*see above, Reasons for the introduction of secondary market liability*).

Recognising these complex issues, the statutory regime for secondary market liability limits the damages award that may be rendered against any given defendant, for example:

- A responsible issuer is liable for no more than the greater of Can$1 million and 5% of its market capitalisation. (As at 1 March 2012, Can$1 was about EUR0.8.)
- A director or officer of a responsible issuer is liable for no more than the greater of Can$25,000 and 50% of his or her annual compensation.

Even with these caps on liability, however, a damages award can be significant, especially when multiple defendants are involved. In addition, there is no limit on liability where the defendant knowingly authorised, permitted or acquiesced in the making of a misrepresentation or the failure to make timely disclosure.

There are also limitation periods for asserting a secondary market liability action (*section 138.14, Securities Act*). No action can be started later than the earlier of:

- Three years after the date of the misrepresentation or failure to make timely disclosure that gives rise to the proceeding.
- Six months after any news release announcing that judicial leave has been granted to commence an action in Canada relating to the same misrepresentation or failure to make timely disclosure.

**The leave requirement**

The most notable aspect of the statutory scheme regarding secondary market liability is the requirement that any party seeking to bring a claim must first obtain leave of the court. The test for leave, which is the same in all Canadian provinces and territories, imposes both a requirement of good faith and an evidentiary threshold. The court will only grant leave where it is satisfied that (*section 138.8, Securities Act*):

- The action is being brought in good faith.
- There is a reasonable possibility that the action will be resolved at trial in favour of the claimant.

There are also certain filing requirements. For instance, on the application for leave, the claimant and each defendant must "serve and file one or more affidavits setting forth the material facts upon which each intends to rely" (*section 138.8(2), Securities Act*). (However, see below, *Case law developments: Affidavit evidence for the leave application: Ainslie v CV Technologies Inc.*)

The leave requirement does not appear in the US legislation for secondary market liability (*see above, Reasons for the introduction of secondary market liability*). It is intended to be a screening mechanism to protect defendants against "strike suits", that is, coercive and unmeritorious claims whose purpose is to pressure a defendant into settlement to avoid costly litigation. However, because the test for leave requires an assessment of the merits of the claim, the stakes are high even at this preliminary stage.

## CASE LAW DEVELOPMENTS

This section examines the most significant judicial decisions interpreting the new secondary market liability provisions. Of the 35 secondary market liability actions that have been filed in Canada so far, only two have progressed beyond the leave stage (*Source: NERA Consulting Report from 7 February 2012*). However, several other cases have highlighted different features of the new statutory regime, such as the limitation period for bringing a claim, the parties which cannot assert a claim, and the evidentiary requirements for the leave application (*see below, Conclusion concerning the procedural questions for secondary market liability*).

**Interpreting the test for leave: *Silver v IMAX***

*Silver v IMAX (2009), 66 B.L.R. (4th) 222 (Ont. S.C.)* was the first case in Canada where leave to prosecute a secondary market claim was granted. In early 2006, IMAX had announced higher than expected revenues for the 2005 fiscal year. It turned out that these revenue figures had been inflated because IMAX had adopted an approach to income recognition that was not in accordance with generally accepted accounting principles (GAAP). When this information was publicly disclosed, IMAX's share price fell by 40%. IMAX later issued amended 2005 financial statements, acknowledging that its initial statements had not conformed to GAAP. Investors who traded shares of IMAX on NASDAQ or the Toronto Stock Exchange commenced a proposed global class action in Ontario and sought the leave of the court to assert a statutory claim for secondary market misrepresentation.

Justice van Rensburg of Ontario's Superior Court of Justice certified the class action and granted leave under section 138.8 to proceed with the secondary market representation claim (*see above, Features of the statutory regime for secondary market liability: The leave requirement*). The main point of contention was how the elements of the test for leave under section 138.8 of the Securities Act should be construed:

- **Good faith requirement.** Justice van Rensburg held that this required the claimants to establish that they are bringing their action in "the honest belief that they have an arguable

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claim, and for reasons that are consistent with the purpose of the statutory cause of action and not for an oblique or collateral purpose".

- **Reasonable possibility of success at trial.** Justice van Rensburg held that this was a "relatively low threshold" for the claimant to satisfy. It only required the claimant to provide credible evidence that would permit the court to conclude that the claimant had more than a *de minimis* possibility of success at trial. While a claimant must satisfy only a very low threshold, a defendant relying on a statutory defence has a correspondingly high evidentiary burden to dissuade the court to grant leave.

IMAX sought leave to appeal Justice van Rensburg's decision to the Divisional Court. However, on 14 February 2011, Justice Corbett denied the motion, holding that there was no reason to doubt the correctness of Justice van Rensburg's decision or her interpretation of the test for leave. Justice Corbett cautioned that while Justice van Rensburg's decision was the first word on the test for leave for secondary market liability, "doubtless it is not the last".

In the US, similar class actions against IMAX were commenced on behalf of only the NASDAQ investors; those actions were later consolidated into one. While the Ontario class action is still ongoing, IMAX agreed to settle the US class action in January 2012 for US$12 million (as at 1 March 2012, EUR1 was about Can$0.8). An order is being sought to amend the class definition in the Ontario action to exclude members who have not opted out of the US settlement.

**Continuous misrepresentations:**
***Dobbie v Arctic Glacier Income Fund***

In *Dobbie v Arctic Glacier Income Fund, 2011 ONSC 25*, Justice Tausendfreund of the Superior Court of Justice affirmed and adopted the principles of the test for leave enunciated in *IMAX*. *Dobbie* also provided the court with its first opportunity to consider the three-year limitation period applicable to a statutory claim for secondary market liability.

From 2002 to 2008, Arctic Glacier Income Fund (AGIF) made representations in its continuous disclosure documents that it and its subsidiaries were "good corporate citizens" operating lawfully in the competitive packaged-ice industry. In 2008, after AGIF announced that it was being investigated by the US Department of Justice for certain anti-competitive practices, the value of AGIF's units dropped significantly. In 2009, one of its subsidiaries pleaded guilty to a charge of participating in a criminal anti-competitive conspiracy in the US.

On 25 September 2008, investors who had purchased units of AGIF from 2002 and 2008 commenced a class action against AGIF and certain officers, directors, and trustees of AGIF and its subsidiaries. The investors argued that between 2002 and 2008 AGIF was representing itself and its subsidiaries as "good corporate citizens" when in fact they were involved in a criminal conspiracy to suppress and eliminate competition.

Relying on the three-year limitation period imposed by section 138.14 of the Securities Act, the defendants argued that the scope of the proposed action should be limited only to representations made after 26 September 2005 (*see above, Features of the statutory regime for secondary market liability: Limits on liability*). Justice Tausendfreund, however, held that for the purposes of the leave application, the defendants' repeated assertion from 2002 to 2008 that it was a "good corporate citizen" operating lawfully in a competitive industry could be treated as one continuing fact situation.

On 1 February 2012, Justice Leitch of the Superior Court of Justice denied leave to appeal this decision as it related to most of the defendants, including AGIF and its trustees. However, she granted leave to appeal the decision insofar as it related to two individual defendants, Frank Larson and Gary Cooley, because there was no evidence on the motion record that they had any role in the corporate disclosure activities or public statements of AGIF. There was therefore reason to doubt the correctness of allowing the action to proceed against them.

In the most recent developments in *Dobbie*, on 8 February 2012, a week after the release of Justice Leitch's decision, AGIF announced that it had reached a settlement agreement with the claimants in the amount of Can$13.75 million, pending approval by the court.

**Affidavit evidence for the leave application:**
***Ainslie v CV Technologies Inc.***

*Ainslie v CV Technologies Inc. (2008), 93 O.R. (3d) 200 (S.C.)* concerned the proper interpretation of section 138.8(2) of the Securities Act, which provides that on the application for leave, the claimant and each defendant must "serve and file one or more affidavits setting forth the material facts upon which each intends to rely" (*see above, Features of the statutory regime for secondary market liability: Limits on liability*). The claimants in *Ainslie* applied for leave to assert a secondary market liability action against an issuer and its former officers, directors, and auditor for misrepresentations in the issuer's financial statements. All parties filed affidavits except for the auditor, who intended to rely solely on its cross-examination of the other parties' affidavits.

The claimants brought a motion to compel the auditor to file an affidavit, arguing that section 138.8(2) required each defendant to file affidavit material for cross-examination. However, Justice Lax of the Superior Court of Justice denied the motion, holding that section 138.8(2) must be interpreted in light of the purpose of the leave requirement for secondary market liability actions, which is to protect defendants from unmeritorious claims. The essence of the leave requirement is to require the claimant to demonstrate the merits of its claim before a defendant must respond. The onus to meet the test for leave remains with the claimant. There is no obligation on the part of the defendant to help the claimant, nor does the leave stage allow the claimant an early glimpse into what the defence might be.

The claimants were granted leave to appeal Justice Lax's decision. However, before the appeal was heard, the parties settled the action. More recently, in *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation, 2012 ONSC 1924*, Justice Perell of the same court accepted Justice Lax's reasoning (*see below, Conclusion concerning the procedural questions for secondary market liability*).

**Shares not acquired on the secondary market:**
***Round v MacDonald, Dettwiler and Associates Ltd.***

*Round v Macdonald, Dettwiler and Associates Ltd., 2011 BCSC 1416*, a decision of the Supreme Court of British Columbia, is the only case outside Ontario to have given judicial consideration to the leave requirement for a secondary market liability action.

The claimant was employed by the defendant issuer from 2002 to 2008, and received shares from the issuer's treasury under a voluntary employee share purchase plan. She sought leave to commence a claim for secondary market liability against the issuer on the basis that in 2007, in connection with the proposed sale of one of its divisions, the issuer had failed to disclose in its annual report that the transaction was subject to government approval. The government subsequently failed to approve the sale and, as a result, the issuer's share price declined.

The Supreme Court of British Columbia denied the motion for leave, finding that there was no reasonable possibility that the claim could succeed at trial because:

- All material facts relating to the claim occurred prior to 4 July 2008, the date on which the statutory scheme for secondary market liability came into force in British Columbia.
- More significantly, the claimant did not have a cause of action because she did not acquire or dispose of her shares on the secondary market; she had acquired them from the issuer's treasury. The acquisition of the shares through a voluntary employee share plan was explicitly excluded from the secondary market liability regime.

The court rejected the claimant's argument that the method in which she acquired her shares was of no significance because the shares, whether acquired on the secondary market and/or issued from the treasury, were "tainted by the wrongdoing" of the issuer. It held that the new cause of action clearly requires the acquisition or disposition of securities on the secondary market, since the purpose of the new regime was to influence conduct that affects the secondary market.

The claimant has since filed a motion for leave to appeal Justice Harris' decision to the British Columbia Court of Appeal, which is still pending.

### Suspension of limitation periods: *Coulson v Citigroup Global Markets Canada Inc.* and *Sharma v Timminco Limited*

On 16 February 2012, the Court of Appeal for Ontario released two companion cases that illustrate the interplay between the limitation periods for primary and secondary market liability and the suspension of limitation periods provided by section 28 of Ontario's Class Proceedings Act, 1992, S.O. 1992, c. 6 (Class Proceedings Act).

The limitation period for secondary market liability is the earlier of three years from the breach of continuous disclosure obligations and six months from a news release announcing that leave has been granted to start an action in Canada in relation to the breach (*see above, Limits of liability*). A similar limitation period also exists for a claim by a primary market purchaser. A claim for damages cannot be brought after the earlier of:

- Three years from the date of the misrepresentation in a prospectus, offering memorandum or take-over bid circular.
- 180 days after the claimant first had knowledge of the facts giving rise to the claim.

Any limitation period that is applicable to a cause of action "asserted" in a class proceeding is suspended in favour of the class member on the commencement of the class proceeding and resumes running when (*section 28(1), Class Proceedings Act*):

- The class member opts out of the class proceeding.
- An order is made de-certifying the class or excluding the member from the class.
- The class proceeding is dismissed without an adjudication on the merits.
- The class proceeding is abandoned or discontinued with court approval.
- The class proceeding is settled with court approval.

When there is a right of appeal in respect to one of these events, the limitation period resumes running as soon as the time for appeal has expired without an appeal being commenced or as soon as any appeal has been finally disposed of (*section 28(2), Class Proceedings Act*).

In *Coulson v Citigroup Global Markets Canada Inc., 2012 ONCA 108*, the court considered section 28. In November 1997, an issuer made a public offering of shares under a prospectus that was later revealed in early 1998 to have contained inaccurate statements. A shareholder, Joseph Menegon, commenced a proposed class action on 5 May 1998, asserting a common law claim for negligent misrepresentation and a statutory claim of primary market liability in respect of alleged misrepresentations in the prospectus. The court dismissed Menegon's action on 6 March 2001, finding that there was no merit to the common law claim and that Menegon himself had not purchased his shares under the prospectus. Menegon appealed, but the appeal was subsequently dismissed on 9 January 2003.

On 8 July 2003, another individual, Paul Coulson, commenced a proposed class action asserting a statutory claim of primary market liability, despite the fact that almost six years had passed since the alleged misrepresentation. Both the lower court and the Court of Appeal for Ontario agreed with the defendants that the limitation period for Coulson's action had long expired. Both courts found that the commencement of the Menegon action had suspended all applicable limitation periods under section 28 of the Class Proceedings Act. The courts also held that the limitation period applicable to the statutory claim began to run again after the dismissal order in 2001 since, as a matter of fact, Menegon's appeal was only in relation to the common law claim. Therefore, the statutory claim was no longer being "asserted" for the purpose of section 28.

In *Sharma v Timminco Limited, 2012 ONCA 107*, the court held that section 28 of the Class Proceedings Act cannot suspend the limitation period of a proposed secondary market liability action before leave to proceed has been granted. The claimant filed a proposed class action and indicated in the statement of claim that it intended to assert a statutory claim of secondary market liability for alleged misrepresentations made from March to November 2008. However, by the end of February 2011 the claimant still had not sought leave of the court to commence his statutory claim. Faced with the possible expiry of the three-year limitation period for secondary market liability claims later

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in 2011, the claimant successfully moved for an order declaring that the limitation period was suspended under section 28 of the Class Proceedings Act.

The Court of Appeal for Ontario reversed the lower court's decision. It held that until leave to sue was granted under section 138.8, the secondary market liability claim was not being "asserted" within the meaning of section 28(1) of the Class Proceedings Act. The mere indication in the statement of claim that the claimant intended to seek leave was not sufficient to suspend the limitation period under section 28(1).

## CONCLUSION CONCERNING THE PROCEDURAL QUESTIONS FOR SECONDARY MARKET LIABILITY

Secondary market liability is still in its infancy. However, the following matters appear to be well settled:

- The threshold for obtaining leave to bring a secondary market liability claim is relatively low.
- A defendant cannot be compelled to produce affidavit evidence on the claimant's leave application.
- The limitation period for bringing a secondary market liability claim continues to run until leave to bring the claim has been granted.

At least one procedural uncertainty remains. Increasingly, proposed securities class actions entail both primary and secondary market liability claims. As discussed, only the latter requires judicial leave; but both claims need to be certified as a class proceeding to bind the proposed class or classes. Judges case-managing proposed class proceedings have held that the certification motion and the leave application should be heard together, citing judicial economy. Until very recently, this proposition would not have attracted much discussion. However, in an earlier decision in the *Timminco* litigation (*Pennyfeather v Timminco Limited, 2011 ONSC 4257*), Justice Perell of the Ontario Superior Court of Justice determined that a defendant responding to a certification motion must file a defence. The Court of Appeal for Ontario then held in *Sharma v. Timminco Limited* that until leave to prosecute a secondary market liability claim has been granted, the claim is not being "asserted" in the class proceeding. (*See above, Case law developments: Suspension of limitation periods?: Coulson v Citigroup Global Markets Canada Inc. and Sharma v Timminco Limited*).

This raises an important procedural question: when filing a statement of defence for the purposes of the certification motion, does the defendant need to respond to the secondary market liability claim even though the plaintiff has not yet been granted leave to assert the claim? The issue came to a head in March 2012, when Justice Perell ruled in *Sino-Forest Corporation* (*see above, Case law developments: Affidavit evidence for the leave application: Ainslie v CV Technologies Inc.*) that where a proposed class action involves both primary and secondary market liability claims, the defendant must file a statement of defence on the certification motion only with respect to the non-secondary market liability claims. However, if the defendant, in responding to the leave application, chooses to file affidavit evidence, the defendant must also respond to the secondary market liability claim in its statement of defence. This ruling has raised some eyebrows and it remains to be seen whether it will be the final word on the subject.

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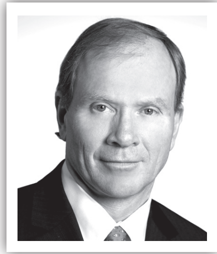

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**Recent transactions**

- *Coulson v Citigroup Global Markets Canada Inc., 2012 ONCA 108*. Counsel to Deloitte & Touche in upholding an earlier dismissal of a proposed US$100 million securities class action against Deloitte and others.
- Arbitration counsel to a private equity fund in a multi-million dollar shareholder dispute (current).
- Counsel to Consolidated Thompson Iron Mines Limited with respect to its Can$4.9 billion acquisition by Cliffs Natural Resources Inc (2011).
- *Ainslie v CV Technologies Inc. (2008), 304 DLR (4th) 713 (Ont SCJ)*. Counsel to CV Technologies Inc. under section 138 of the Ontario Securities Act regarding secondary market liability.

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**Recent transactions**

- *Coulson v Citigroup Global Markets Inc., 2012 ONCA 108*. Counsel to auditors in upholding an earlier dismissal of a proposed US$100 million securities class action against auditors and others.
- Arbitration counsel to mining company in proposed US$50 million ICC arbitration (current).
- Arbitration counsel to large real estate client involved in domestic Can$30 million arbitration with energy utility (2011-2012).
- *Mason v Augen Capital Corp., 2010 ONSC 5319*. Represented shareholders in dissident shareholder proxy contest.
- *Polar Star Mining Corporation v Willock, 2009 CanLII 11436*. Represented corporation in dissident shareholder action.

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**Recent transactions**

- Co-counsel to a multi-national accounting firm in respect of a receivership (current).
- Co-counsel to a real estate developer in a dispute over a condominium development project (current).
- Counsel to a freight company involved in a contractual dispute with a service contractor (current).