


Climate Related Financial Risks & Opportunities for Credit Unions

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Panel:
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DIRECTORS' Forum
for Directors, by Directors

Physical risk and transition risks materiality

Physical risks can be acute (e.g. increased severity of extreme weather events) or chronic (e.g. related to longer term shifts in climate patterns). Example: withdrawal of insurance for property transactions during wildfire season.

Transition risks relate to policy, legal, technology, market, or reputational risk. Example: action to mitigate physical risk end up changing cost structure for many industries.

"The world economy set is to lose up to 18% GDP from climate change if no action is taken."

"The U.S., Canada and the UK would all see around a 10% loss."

-Swiss Re Institute, April 2021

'Extreme weather' and 'climate action failure', are two of the 'most likely' global risks facing the world in 2021

Source: 2021 World Economic Forum Global Risks Report

5 reasons to put climate governance on the board agenda

Climate Change and Boards

"The evolution of our understanding of climate change from an ethical or environmental issue to one that presents foreseeable financial and systemic risks has significantly changed its relevance to the governance of both corporations and investors. This has serious implications for the duties of directors and officers, and potential disclosure obligations for companies."

- Primer on Climate Change: Directors' Duties and Disclosure Obligations

Commonwealth Climate and Law Initiative, June 2021


COMMONWEALTH Climate and Law Initiative | Climate Governance Initiative

Primer on Climate Change: Directors' Duties and Disclosure Obligations

In support of the Principles for Effective Climate Governance

June 2021

In collaboration with Canada Climate Law Initiative | L'Initiative canadienne de droit climatique

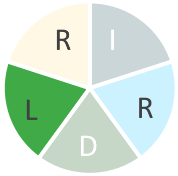
Getting started: Questions for the board

- [x] Does the fund have a climate strategy? Does the board have effective oversight of the strategy? Is the strategy reviewed annually?
- [ ] Who is responsible and accountable for implementing the fund's climate strategy?
- [ ] Does the board have effective oversight of management? Is management undertaking careful and thorough evaluation of climate change risks and opportunities in making decisions to invest, divest, or hold?
- [ ] Has the board agreed on material metrics and targets to measure and disclose climate-related issues? Are metrics aligned with global standards? Are there clearly articulated standards and metrics to evaluate investment managers, green investment offerings, and green funds?
- [ ] Does the board have climate expertise and knowledge in its matrix of skills? If not, how is it acquiring/hiring the expertise? Which board members are taking the lead?
- [ ] Does the Board participate in or support sector engagement with government on climate policy?

About the Canada Climate Law Initiative

- The Canada Climate Law Initiative is a national research initiative that works to clarify directors' duties and fiduciary obligations related to climate change.
- Our mission is to ensure Canadian directors and trustees understand their fiduciary obligations with respect to climate change, and have access to resources to help them govern with confidence in the area of climate-related financial risks and opportunities.
- We offer free confidential board presentations and we maintain an online Knowledge Hub for Canadian directors and trustees.

Why boards need to put climate on the board agenda:
Legal duties



Fiduciary duty

Directors must act honestly and in good faith, with a view to the best interest of the corporation. The fiduciary duty is not confined to short-term profit or share value. Where the corporation is an ongoing concern, it looks to the long-term interests of the corporation.

Duty of Prudence or Care

Every director must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, and be diligent in supervising and managing the corporation's affairs.

Business Judgment Rule

Courts will defer to the reasonable business judgment of disinterested directors who have followed an appropriate process. Boards must engage in a reasoned analysis before making decisions.

Oversight of Disclosure

Public companies have disclosure obligations that include disclosing the risks facing the corporation. Misrepresentations can expose the corporation, its officers and its directors to both regulatory and civil liability.

Carol Hansell Opinion

Since there can be little doubt that directors are aware of climate change risk, they must inform themselves of the risk that climate change poses to the corporation and how that risk is being managed. If this information is not already included in management reports to the board, the board should direct management to deliver the necessary information to them.

- Putting Climate Change Risk on the Boardroom Table

Carol Hansell, Hansell LLP, June 2020

HANSELL LLP

PUTTING CLIMATE CHANGE RISK ON THE BOARDROOM TABLE

Climate change has been identified by the scientific community and accepted by world leaders as an existential threat. Governments and regulators in Canada and internationally have been engaged for many years in responding to the risks posed by climate change. The implications of climate change for the economy and individual businesses have been an important area of focus.

We have been asked whether directors of Canadian corporations are obliged to address climate change risk. The answer is clearly yes. Canadian courts have accepted climate change and the risks it presents as self-evident and uncontroversial, as has the investment community. It would be nearly impossible for a director to dismiss climate change risk out of hand.

The obligation of directors to consider the implications of climate change risk is grounded in the duties each director owes to the corporation he or she serves. In managing or overseeing the management of risk, directors must meet the objective standard of what a reasonably prudent person would do in comparable circumstances. Among other things, directors must put aside their own preconceptions about the reality or imminence of climate change risk. They may not demure to management and simply wait for presentations to be made to them. Directors must put climate change on the board agenda. They must require reports and recommendations from management and external sources as necessary, and be satisfied that the corporation is addressing climate change risk appropriately.

Directors must act with a view to the best interests of the corporation. This can be complex in application. The issues may be long term or short term and must be evaluated in the context of a shifting landscape. While the corporation is responding to climate change risk, so too are the corporation's customers, suppliers, employees and investors. Directors may take the interests of the corporation's stakeholders into account, but those interests may be different from one another. It falls to the directors to determine whose interests should prevail, but a judicial determination of this nature in the context of climate change risk is largely untested.

The governance tools necessary to deal with risk are well developed and readily adaptable to deal with climate change risk. Many Canadian boards are deeply engaged in climate change risk and provide exemplary leadership for other boards, both in Canada and abroad. Others must now begin their engagement with these complex issues.

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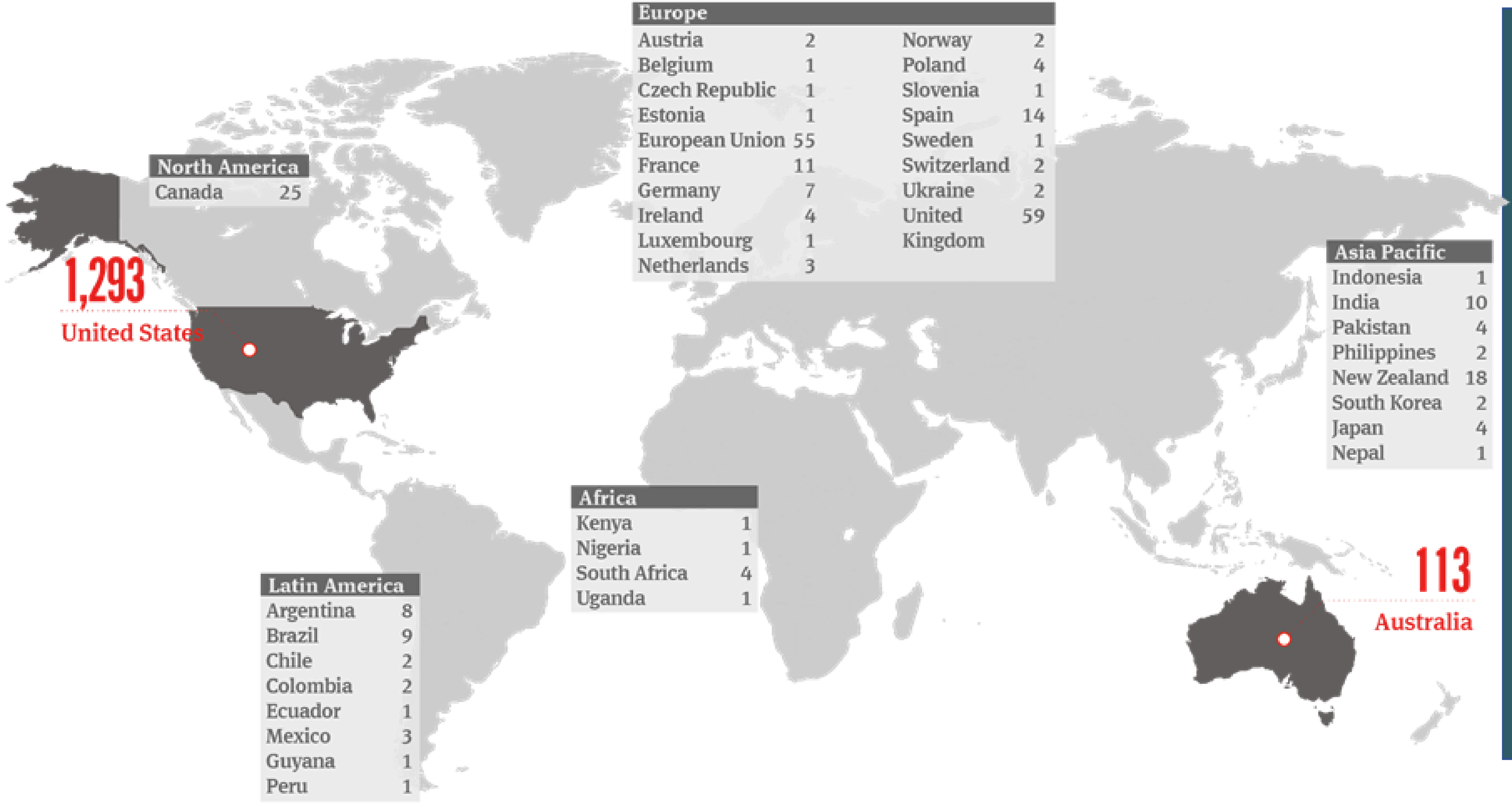
Climate litigation cases are increasing



Categories of climate litigation

- Compliance with climate commitments
- Challenging projects or policies
- Constitutional and human rights cases
- Liability claims
- Corporate and financial markets cases
- Adaptation-focused cases

- Global Trends in Climate Change Litigation 2021 Snapshot

Source: Norton Rose Fulbright, As of Feruary 2020, https://www.nortonrosefulbright.com/en/knowledge/publications/0c9b154a/climate-change-litigation-update

CCUA Climate Disclosures Working Group

- Established fall 2020
  - Open group, 20+ credit unions, 4 centrals, CCUA staff
- Support credit unions to develop and publish disclosures and measurements related to climate impacts of portfolios and operations
- Activities
  - Regular meetings
  - Webinars: opportunities and risks, TCFD and PCAF
  - Climate Change Resources
  - Response to OSFI consultation on climate-related risks

CCUA Climate Disclosures Working Group

- Continuing to meet and collaborate
- Next steps
  - Leverage the TCFD framework
  - Learning and Education for system
  - Resource and Data Coordination
  - Advocacy and Government Relations
  - Opportunity Mapping