

# Torys' Video Podcast Series: Climate Change

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## Climate Change Disclosure

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Michael Pickersgill discusses disclosure obligations under existing securities regulations, trends, and guidance provided by regulators.

### *Edited transcript*

Given the increasing public attention being paid to climate change and the fact that a regulatory regime in respect of GHG (greenhouse gas) emissions and climate change generally is now a near certainty, or in place in certain jurisdictions, companies are asking us what their disclosure obligations are in this area. There are a couple of sources of pressure for companies to make disclosure: institutional investors, securities regulators, and legislators more generally, are looking at disclosure as a tool to manage climate change risk.

While there is no market practice that has developed with respect to climate change disclosure, and rules in this respect are in their infancy, companies will be in a better position to make informed climate change disclosure decisions by following the developments in this area.

While it should not be overstated or overgeneralized, there is a growing consensus that investors are looking for increased disclosure about companies' climate change risk. One of the ways this is manifesting itself is through voluntary disclosure initiatives like the Carbon Disclosure Project. These initiatives generally require issuers to disclose their carbon footprint – their emissions – as well as what they see as the risks and opportunities presented by climate change, and then what their strategies are for managing that climate change risk.

Existing securities law obligations in Canada do not specifically speak to climate change; however, there are the environmental disclosure obligations built in to companies' continuous disclosure requirements that could, for certain issuers, require them to address climate issues now.

For example, the annual information form requires issuers to comment on the effect of environmental regulation, as well as risk factors. Maybe more importantly, an issuer's management's discussion and analysis requires that issuers comment on events, trends and uncertainties that could have a material impact on the issuer's business. For some issuers, the regulation of GHG emissions and climate change, as well as the physical impacts of climate change, may require some disclosure in response to these items.

The fundamental principle for an issuer considering climate change disclosure in the securities law context will be the question of materiality. In considering materiality, issuers should be thinking about a number of different issues. Among those are, What regulations will your company likely face as the developing regulatory schemes come into focus? What are the physical impacts of climate change that could impact your business? Also, what do your investors want to know about climate change in the context of your business?

Regulators in Canada and the United States *are* paying attention to this area. In Ontario, the corporate finance team of the Ontario Securities Commission completed a review of 35 issuers' environmental disclosure in their annual information forms. That was a review of the environmental disclosure and not specifically related to climate change, but they did provide guidance with respect to how issuers should be addressing environmental disclosure generally and it underlines that the regulators are looking at this area closely.

In the United States, there is also regulatory attention being paid to this area. The New York Attorney General's Office, for instance, recently undertook an investigation program of the disclosure of certain power companies in New York. As a result of that, they've entered into two settlement agreements that provide for increased and specific climate change disclosures by those companies as part of their annual reporting.

In addition to the limited guidance from regulators, there is guidance available from the Canadian Institute of Chartered Accountants – for example, on preparing management's discussion and analysis disclosure with respect to climate change. However, notwithstanding that guidance there are a number of challenges for issuers in this area.

For example, there continues to be a lack of certainty about how the regulatory regimes in respect of climate change and GHG emissions will ultimately unfold. Accordingly, it is difficult for issuers to analyze the effects with any precision. Another example of the difficulty for issuers is the fact that standards and protocols for measuring, quantifying and disclosing GHG emissions – carbon footprint – are still developing; so issuers will need to monitor that and will continue to look for certainty from regulators in that respect. 