BC Securities Commission
Invest Right

Capital Markets Adjudicators' Policy Forum

The role of capital markets tribunals in corporate matters: the (blurry?) line between securities law and corporate law

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Securities Act (Ontario)

Under s. 127, the OCMT may make an order:

- cease trading in securities
- relating to disclosure in a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document

Securities Act (BC) (2020) – expanded remedies for special applications to the BCSC in M&A transactions

- Under s. 114, the BCSC may make an order:
  - cease trading in securities
  - relating to records used or issued in connection with a take-over bid, issuer bid, business combination, related party transaction or proxy solicitation
  - rescinding a transaction
  - prohibiting any person from exercising a voting right attaching to a security (cease vote)

YourWay Cannabis Brands Inc. (2022)

- Cohen delivered a notice proposing to nominate 5 directors
- His proposed nominees were not included in Yourway's management information circular
- Cohen brought an application seeking orders to
  - amend the management information circular and proxy to include his nominees
  - cease vote until circulation of the amended materials
- Cohen filed a concurrent application at the BC Supreme Court

YourWay Cannabis Brands Inc. (2022) (cont'd)

- Cohen argued on a plain reading of s. 114, the BCSC's jurisdiction was extended to include proxy solicitation and Yourway is an issuer whose securities are the subject of a proxy solicitation
- The BCSC dismissed the application
- The core of the dispute engages corporate law (director nomination). There was no law or policy engaged involving securities or trading in securities which would engage the public interest within the meaning of section 114
- Remedies available in the courts

Zefiro Methane Corp. (2026)

Main application:

- Debs filed an application alleging that a debt settlement involving the issuance of Zefiro securities was an improper defensive tactic in the face of a proxy contest

Cross-application which raises the issue of corporate vs. securities law:

- McGrath filed a cross-application for an order prohibiting Debs, XMST and XMC from voting certain shares of Zefiro at the meeting

Zefiro Methane Corp. (2026) (Cont'd)

Background facts on cross-application – Debs and X Machina private equity group

- Debs founded and controlled XMC and XMST
  - XMC is a Delaware limited liability partnership and the registered holder of 3,846,000 Zefiro shares
  - XMST is a corporation which principally invests in portfolio companies in the energy space and the registered holder of 16,000,000 Zefiro shares

Zefiro Methane Corp. (2026) (Cont'd)

Background facts on cross-application – side-letter

- Debs is the registered holder of 1,068,250 Zefiro shares
- XMC, Debs, McGrath and other parties entered into a side-letter under which:
  - Debs agreed to contribute to XMC 50% of his ownership interest in XMST (31.87% of outstanding XMST interest) and 50% of his Zefiro founder shares (500,000 shares)
  - The remaining 50% of Debs' ownership interest in XMST and Zefiro founder shares cannot be voted

Zefiro Methane Corp. (2026) (Cont'd)

Respondent's submissions on cross-application

- McGrath submitted it would be appropriate to make orders restraining voting rights.
  - Honesty, transparency and voluntary disclosure of the true nature of ownership and control of public companies are cornerstone principles in our securities regulatory regime
- Debs was using his control of the XMC Manager to use funds that the respondents invested to make decisions which favours Debs to the detriment of other investors of XMC. Many XMC investors indicated that they did not support Debs
- Debs would be in breach of the side-letter

Zefiro Methane Corp. (2026) (Cont'd)

BCSC decision on cross-application

- The BCSC declined to exercise jurisdiction to adjudicate fiduciary duties or contractual rights
- While the Act empowers the BCSC to order remedies that would be useful to the respondents, the relevant remedies are to be imposed only in relation to securities law issues
- McGrath has commenced litigation in New York against Debs about Debs' conduct in managing XMC and Zefiro. The issues are before the courts which have access to the necessary facts to reach proper conclusions

Corporate law vs. Securities law



Corporate Law	Securities Law
• Oppression • Fiduciary duties • Corporate governance • Director nomination or election • Calling of meetings and meeting conduct • Advance notice provisions	• Disclosure • *Corporate governance (e.g. NI 58-101, audit committee) • Shareholder rights plans • Private placements • Defensive tactics that involve the issuance of securities (NP 62-202) • MI 61-101

Recent Academic Input

Covert Defences: Reassessing the Regulation of Private Placements in Canadian Takeover Bids (2026) 71:3 McGill LJ 895. (Maziar Peihani)

In his paper, Professor Peihani surveys the law on defensive tactics and argues:

- corporate law allows broad application of the business judgment rule. This should be less applicable (or not applicable) in the securities law context
- the question for securities regulators should be, for example, whether disclosure was required or not, or whether a particular measure improperly impedes shareholder choice

Recent Academic Input (Cont'd)

Covert Defences: Reassessing the Regulation of Private Placements in Canadian Takeover Bids (2026) 71:3 McGill LJ 895. (Maziar Peihani)

Professor Peihani suggests:

- securities law and corporate law are, and should be treated as, distinct sphere
  - The regulation of defensive tactics exists precisely because securities law requires something more than corporate law to govern a hostile bid
- Securities adjudicators might be going too far currently in showing deference to boards

Issues to consider



- How adequate is access to courts?
- Should securities tribunals be more flexible in deciding issues given the limitations on access to courts?
- Is the issue of access to a tribunal purely a matter of panel interpretation and discretion, or is there an institutional issue of how to use scarce resources?

Issues to consider



- Is the division of corporate law vs. securities law on the prior slide generally accurate?
- Would a better threshold question for the tribunal to exercise jurisdiction be whether the substance of the dispute is the ability of shareholders to make an informed decision (e.g. to tender into a bid or to vote)?