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PRACTICE AND PROCEDURE BEFORE ADMINISTRATIVE TRIBUNALS

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AUTHOR'S NOTE

In *Lundin Mining Corp. v. Markowich*, 2025 CarswellOnt 19446, 2025 CarswellOnt 19447, 2025 CSC 39, 2025 SCC 39, 2025 A.C.W.S. 3987, 508 D.L.R. (4th) 387 (S.C.C.), the majority of the Supreme Court of Canada interpreted the term "material change" in Ontario's *Securities Act*, RSO c S5 broadly, with a view to implementing the purposes of the regulatory regime. The issue in *Lundin* was the timing of when a mining company should have disclosed pit wall instability and a consequent rockslide at its most important mine. The timing depended on whether the instability and rockslide amounted to "material fact[s]" or "material change[s]". A material fact need only be disclosed periodically. But a material change must be disclosed "forthwith" (*Securities Act*, s. 75(1)). A material fact is defined in s. 1(1) as "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities". A material change is "a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer". In *Lundin*, the company did not disclose the instability and rockslide immediately. A class action seeking almost $200m in damages was brought, alleging amongst other things a breach of the statutory duty to make timely disclosure of material changes.

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The majority agreed with the Ontario Court of Appeal that the motion judge had erred by relying on restrictive definitions of "change", "business", "operations", and "capital", and then erred by applying those definitions to determine whether there was a reasonable possibility that there had been a material change.

According to the majority, the Ontario legislature intentionally left these terms undefined to allow the legislation to be applied flexibly and contextually to a wide range of industries and corporate structures. Further, the disclosure standards in the *Securities Act* should be applied to promote the statutory purpose of preventing and deterring informational asymmetry between issuers and investors, and that adopting rigid definitions would ossify the *Securities Act* and would frustrate the statutory purpose.

This focus on function and purpose reflects a subtle shift, at least in this context, from the Court's recent "text as anchor" approach to statutory interpretation.

In particular, Jamal J., writing for the majority, provides a helpful caution on the drawbacks of relying on dictionary definitions of key statutory terms:

> [64] I agree with the Court of Appeal's conclusion that the motion judge erred by relying on a dictionary definition of "change" as "a different position, course, or direction". The Court of Appeal stated that the motion judge provided "no support for using this definition from any case law interpreting the definition of 'material change' in the *Securities Act*, nor does he provide any rationale for adopting this definition of 'change' in the context of the *Securities Act*" (para. 59). The court added that "what qualifies as a 'change' must be looked at in reference to the terms 'business, operations or capital', and in the context of the facts of each case" (para. 82). In my view, the inherent flexibility of what can be a "change" suggests that the ordinary meaning of this term should not be constrained by dictionary definitions. In that sense, the Court of Appeal was correct to say that "a change is a change" (para. 82). In this context, such simplicity promotes, rather than abdicates, the task of statutory interpretation. By contrast, as I will explain, several difficulties arise in relying solely on a dictionary definition of the undefined term "change" under the *Securities Act*.
>
> [65] At the outset, I stress that it is not unusual or necessarily wrong to start the process of statutory interpretation with a dictionary definition. To understand the meaning of undefined words, judges and lawyers often look to dictionaries "as a starting point in the interpretive process" (*Ontario v. Canadian Pacific Ltd.*, 1995 CanLII 112 (SCC), [1995] 2 S.C.R. 1031, at para. 67).
>
> [66] At the same time, dictionary definitions cannot determine the meaning of legislation (see, e.g., *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, at para. 43). There are several reasons why courts should be cautious when relying on them.
>
> [67] First, the meaning of words "may differ significantly from one dictionary to the next", and "even minor differences in the way words are defined can make a difference in the outcome of a case" (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 3:03[3]).

[68] Second, and more fundamentally, dictionary definitions focus on the typical usage of words, rather than on the full range of intended application of a word that the legislature expressly left undefined. To quote Professor Ruth Sullivan, "dictionary definitions . . .communicate the senses of a word rather than its range of possible reference — its connotation or intension rather than its denotation or extension" (§ 3:03[3]). As she explains:

> Connotative or inten[s]ional meaning focuses on the common or typical attributes found in the usage of a given sense of a word. . . Denotative or extensive meaning refers to the things to which a word may correctly be applied. Since the denotation of words is unpredictable and indeterminate, it cannot be fully captured in a definition. [§ 3:03[3]].

[69] Third, dictionary definitions "can say very little about the meaning of a word as used in a particular context" (Sullivan, at § 3:02[4]; see also P.-A. Côté and M. *Devinat, Interprétation des lois* (5th ed. 2021), at para. 982, citing *R. v. Monney*, 1999 CanLII 678 (SCC), [1999] 1 S.C.R. 652, at para. 26). Under the modern principle, interpreting "a phrase in a statute does not simply involve transposing a dictionary definition of each word. The phrase has to be construed according to its context and the underlying purpose of the provision" (A. Burrows, Thinking About Statutes: Interpretation, Interaction, Improvement (2018), at pp. 6-7, quoting *An Informer v. A Chief Constable*, [2012] EWCA Civ 197, [2013] Q.B. 579, at para. 67).

[70] Care must therefore be taken in using dictionaries to give definitive meaning to terms that a legislature has intentionally left undefined. In the present context, the Ontario legislature's intentional decision to leave the word "change" undefined and to use that term with a group of other undefined words has several consequences.

[71] First, the legislature intended the word "change" to retain its ordinary meaning. As the Court of Appeal noted, "a change is a change" (para. 82).

[72] Second, the legislature used the term "change" in the particular context of securities legislation, where the purpose of continuous disclosure obligations is to level the informational playing field between issuers and investors. The word "change" takes meaning from this context, the facts of each case, and the relevant industry norms, rather than from a strict legal formula.

[73] Third, by leaving the term "change" undefined, the legislature has maintained flexibility for the *Securities Act* to apply to widely varying factual scenarios. A rigid or technical definition of "change" could limit the effectiveness of the legislation across a broad range of industries or corporate structures.

[74] Finally, although the legislature left "change" undefined, regulators and courts have provided helpful interpretive guidance on what constitutes

> a "material change" in various policy documents and judicial decisions, which collectively help illustrate the meaning of the expression.
>
> [75] In sum, substituting a dictionary definition for the intentionally undefined term "change" restricts the reach of the legislation, contrary to the legislature's purpose.

This caution represents one of several helpful takeaways with respect to statutory interpretation adopted by the majority of the Court in *Lundin Mining Corp*.

This release also contains the following recent developments in administrative law.

In *Jennings-Clyde (Vivatas, Inc.) v. Canada (Attorney General),* 2025 CarswellNat 5475, 2025 FCA 225 (F.C.A.), the Federal Court of Appeal granted an appeal from a dismissal to grant an application for judicial review from a decision of the Canada Revenue Agency refusing to let a taxpayer file returns late. The Court of Appeal agreed with the applicant that it had not received an adequate explanation for the CRA's decision. Stratas J.A., writing for the Court, also linked the failure to provide adequate reasons to a lack of adequate funding of CRA.

In *Cole v. The Law Society of British Columbia*, 2025 CarswellBC 3668, 2025 BCCA 423 (B.C. C.A.), the B.C. Court of Appeal upheld a sanction of six month suspension imposed by a review board of the Law Society of British Columbia on a lawyer found to have committed professional misconduct. The panel hearing the sanctions portion of the case originally imposed a hybrid sanction of a four-month suspension and a $20,000 fine. This hybrid sanction was modified by the review board. The Chief Justice, writing for the B.C. Court of Appeal, found that the Board had not fettered its discretion by focusing on whether there were "exceptional circumstances" warranting the hybrid sanction.

In *R.W. Tomlinson Limited v. Labourers' International Union of North America, Local 527*, 2025 CarswellOnt 20671, 2025 ONCA 861 (Ont. C.A.), the Ontario Court of Appeal considered a jurisdictional dispute between an arbitrator and the Court. The motion judge had held that the appellant, a party to the relevant collective agreement, had to arbitrate its dispute with the respondent union. But he also concluded that the Superior Court lacked jurisdiction over the claims of two related, but legally distinct corporate appellants not bound by the collective agreement, because their claims arose from the same dispute. While that conclusion prevented an attempt to undercut labour arbitration through parallel litigation, it also produced a jurisdictional dead end: two corporate appellants left without an available forum, since a labour arbitrator has no authority over non-parties to the collective agreement. Such outcomes invite structural scrutiny.

In order to "safeguard structural rule of law and access to justice principles," the Court held that the Superior Court must retain jurisdiction over claims involving non-parties to the collective agreement, because a labour arbitrator has no personal jurisdiction over them. At the same time, respect for the integrity of labour arbitration requires the court to consider whether to temporarily stay such parallel litigation pending arbitration between the parties to the collective agreement.

In *McKee v. Tarion Warranty Corp*., 2026 CarswellOnt 465, 2026 ONSC 205 (Ont. Div. Ct.), the Ontario Divisional Court dismissed an appeal from the License Appeal Tribunal (LAT)'s decision rejecting the appellant's claim for greater damages for defects in a new home than approved by the Tarion Warranty Corporation. Applying the appellate standard of review, the Court found no reversible error on the part of the LAT.