

# CORPORATIONS IN THE CROSSHAIRS: STAKEHOLDER ACTIVISM AND THE ROLE OF CORPORATIONS IN SOCIETY

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## TOPIC AND IMPORTANCE

Stakeholders of a corporation have an interest in pushing a company to take actions which align with their values, whether it be on environmental, social or other issues. From customers and employees to shareholders and governments, stakeholders have been increasingly advancing environmental, social and governance (ESG) issues at Canadian companies, and at companies around the world. This rise in stakeholder activism has coincided with societies that are increasingly politically and socially divided, the COVID-19 pandemic, wars in both Europe and the Middle East, and historic inflation and interest rates, as well as an ongoing and worsening climate crisis. Given the rise of stakeholder activism, this article discusses what diverse tools stakeholders are using to shape corporate behaviour, as well as how companies and their lawyers are responding.

## MAIN ARGUMENTS

In the latter half of the 2010s, companies began proactively advancing ESG goals as part of their business strategies. Many committed to climate-related objectives like “Net Zero” emissions, and funding diverse community initiatives like Pride parades. Companies have released bold purpose statements and annual reports discussing their ESG efforts, which have in turn raised expectations from stakeholders and calls for public accountability. However, if a company’s actions fail to align with stated goals, the disappointment felt by their stakeholders in turn leads to a rise in stakeholder activism. Now, with the growth of the anti-ESG and anti-diversity, equity and inclusion (DEI) movements, companies are being pulled in two directions on controversial topics—between those stakeholders pushing for progressive priorities and those pushing for conservative ones. In response to the backlash to ESG and DEI, some companies are even rolling back their ESG and DEI initiatives.

Stakeholders are using an increasingly diverse set of tools to advance their causes. In addition to long-used tactics such as protests and

boycotts, advocacy groups have started using courts to advance climate-related interests. Others have directly launched litigation against the governments that regulate these corporations: for instance, youth activists in *Mathur v. Ontario* argue that the Ontario government's failure to act on climate change violates the *Canadian Charter of Rights and Freedoms*. Another prominent tool being used to push for change is shareholder proposals at annual general meetings; with ESG issues such as climate change and diversity on the meeting agenda, all stakeholders can see the arguments of the shareholder proponent and the response of the company. The company's practices or stated goals may be placed under intense scrutiny.

Companies respond to activism in different ways—they might choose to ignore activists, or they might sit down with them to come to a resolution. Some companies go on the offensive against activists and take legal action against them.

These complex times require lawyers (both in-house at companies and externally) to advise not only on traditional law and compliance issues that have long been the focus of counsel, but also on strategy, communications and stakeholder engagement. In doing so, they must step out of their siloed role to become a strategic business advisor. This requires them to build a deep understanding of the business and its stakeholders, and to anticipate, mitigate and respond to stakeholder activism.

## **CONCLUSION AND ADDITIONAL CONSIDERATIONS**

The last half-decade of global tumult has created enormous levels of pressure on companies to respond to competing demands from their stakeholders on ESG issues. As stakeholders develop and utilize new tools to influence company behavior, lawyers will need to be nimble and work across business segments to guide the company.