



**TOP 10
BUSINESS ISSUES
WITH LEGAL
IMPLICATIONS 2013**

From a global economic perspective, Canada made it through 2012 relatively unscathed compared to many other advanced economies. Growth has been modest but steady, thanks to the lumber, auto and financial sectors, and Canada's policies and responsible banking practices have shielded it from the global economic crisis to a degree. Although the country has experienced some encouraging prospects in foreign investment and job growth, the global economic outlook remains volatile, and Canadian businesses face increasingly complex and evolving regulatory, legal and compliance requirements as they prepare to move into 2013.

With this in mind, the professionals from law firm Borden Ladner Gervais LLP (BLG) have compiled the top 10 business issues with legal implications for 2013. This is what they forecast:

1. Big data, big privacy concerns

Companies across many sectors – from retailers to insurers to cosmetic surgeons – have increasing access to technological tools and resources to help compile and manage data to zoom in on target customers and prospects. But the collection, responsible management and trading of all that personal information may create a powerful backlash now that provincial privacy commissioners are on the case. Canadian businesses face greater responsibility in how they deal with the storage, exchange and sale of data. Organizations can certainly expect greater liability risk as they move into 2013, as well as potential damage to corporate reputation.

2. Pipelines, politics and people's choice will confound the oil and gas sector

Traditional obstacles to growth markets like Asia might seem easy to overcome for an industry with a high-demand product, but oil and gas players are perplexed by a new barrier to entry – societal permission. The medley of constitutional, regulatory and environmental complications that come with oil and gas export is drawing public attention and contributing to a social license that's becoming more difficult to attain. The obligation to consult affected stakeholders in a meaningful way is critical to winning that social license, not only for First Nations affected but for all communities and citizens along the way of a proposed pipeline or right of way.

On the heels of their high-profile success in putting up road-blocks to the planned Keystone XL pipeline, a \$7-billion project that was to carry oil from Alberta's oils sands to the U.S. south, we should expect environmentalists to step up their activities in opposition to big oil projects.

In 2013, the oil and gas sector is going to have to assume that no major project will be under the radar, and will need to anticipate significant opposition.

3. Riding out the pension storm

The profound questions that have dominated the pension landscape and created a perfect pension storm will give way in 2013 with new financing structures. Low interest rates continue to make it difficult to fund pension plans and a greying nation has added additional pressure. What's risen from the ashes is a hybrid model of financing. There is growing interest in shared risk plans, which combine the best elements of traditional defined benefit and defined contribution plans: fixed costs for employers and a pooled target benefit for employees. Adoption of this new form of financing can have an almost immediate impact on the bottom line, which means this trend will only become more significant as we move into 2013. And since the new shared risk arrangement affects the management of the workforce and the bottom line, significant legal change is most certainly on the horizon.

2013 will also be a make or break year for the newest pension structure – the pooled registered pension plan. Intended as a low cost savings vehicle with minimal employer responsibility, these plans have been slow to gain traction. PRPPs are attractive for small and medium sized employers and offer an attractive means to increase pension coverage. Although federal rules are close to being final, the success of PRPPs will depend on their adoption by the provinces. Will the provinces come on board in 2013?

4. What's "good" for Canada?

The multi-billion-dollar shopping spree by foreign controlled corporations and, in particular, state-owned entities, in the Canadian oil patch has put the Canadian government's "net benefits test" in the spotlight. The federal government's ability to step in on Progress and Potash has many wondering how the government decides what's in the "best interests of Canada?" Critics have complained the test is opaque at best and politically driven at worst.

With more to come as commodity-hungry countries look to Canada to secure energy supplies and feed economic expansion, there will be greater pressure on our federal government to review and redefine the benefits and barriers to these deals and how they impact the Canadian economy. The Prime Minister has promised to provide greater clarity on how the government plans to review proposed takeovers, and, in 2013, many more Canadians and prospective foreign investors will be keeping an eye on this space.

5. Corporate Canada will hit the road looking for growth

Growth in North America is expected to hover at or below the two per cent mark for the foreseeable future, which means Canadian companies will need to look abroad if they want to expand. Traditional partners, like Europe, are in the middle of an economic crisis, and emerging markets still present risks and realities that are giving companies pause. Still, with so many opportunities on the global stage we will see more companies pushing international boundaries in 2013. The smart ones will understand they must proceed with caution – emerging business and legal practices don't yet measure up to Canadian standards. How they navigate this journey will have a significant impact on the future players on the international stage.

6. The Free-Trade door will swing both ways

Canada is negotiating free trade agreements, or in preliminary free trade discussions, with more than a dozen countries or regional bodies, from India and Japan, to Korea, Ukraine and Morocco. Our hope is that these agreements will open new doors for Canadian exports, but free trade works both ways. Our partners in these negotiations want fair access to Canadian markets such as dairy and meat that enjoy protected status. With each potential agreement, we'll see more industry consultation in an effort to create win-win situations, while at the same time, public controversy as consumers feel the after-effects of the compromises made to be a part of these deals.

7. Changing dynamics – a renewed focus on consumer activities

Canadian policy-makers have placed a renewed focus on the regulation of consumer activities, putting increasing pressure on manufacturers, retailers and marketers. From more transparent labelling, to increased restrictions on marketing claims, to new anti-spam legislation, consumer-facing businesses are subject to new and ever-changing obligations – and ignoring them may have consequences for director and officer liability, and exposure to class proceedings. Understanding the distinctive Canadian regime is crucial to avoid unwelcome surprises.

8. Good governance or good grief

The activist investor will continue to gain steam. We will see continued pressure on boards of directors to rein in compensation packages, to separate the roles of chairman and CEO, and to listen to shareholder activists on everything from “say-on-pay” to individual board member elections.

With increased shareholder activism, the role of the board member will come under even greater scrutiny, and a job that once seemed like it might be a pleasant way to fill a few hours in retirement will come with enormous responsibility, and enormous liability.

9. A good news story about Canadian tax?

While some Canadians may not appreciate the domestic tax burden, foreign businesses are often very attracted by the Canadian tax environment. Canada has relatively low corporate tax rates, offers generous R&D incentives and boasts a stable and strong economy. In fact, last year, Forbes ranked Canada the best country for business. As Canada's federal and provincial governments get more involved in marketing Canada to the outside world and as more businesses seek new opportunities globally, we should expect to hear more positive reports about Canada's tax environment and the incentives for doing business in Canada.

10. It's beginning to look a lot like... America?

As plaintiffs and plaintiff counsel continue to press for certification of class actions, a more litigious environment is moving Canada in the direction of the U.S. Not only will we see more class actions as we move into 2013, but their financing structures will continue to evolve. Various court rulings across Canada have approved a controversial new litigation arrangement in which an independent third party agrees to pay legal costs in exchange for a part of any winnings.

About Borden Ladner Gervais LLP

Borden Ladner Gervais LLP (BLG) is a pre-eminent full-service, national law firm focusing on business law, commercial litigation and intellectual property solutions for our clients. With more than 750 lawyers, intellectual property agents and other professionals in six Canadian cities, BLG assists clients with their legal needs, from major litigation to financing and patent registration. For further information, visit blg.com.

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