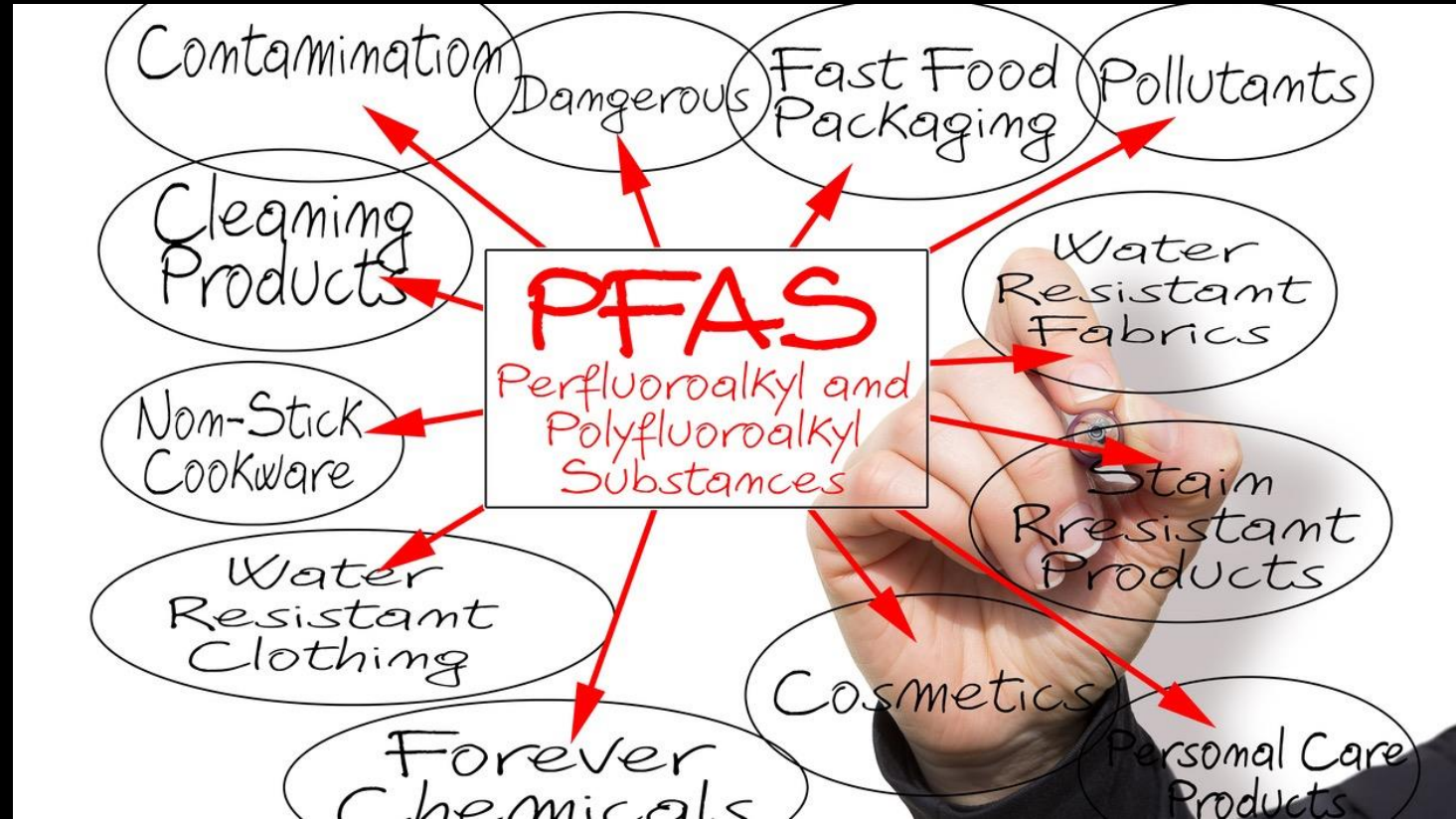


# PFAS Litigation in Canada: The Growing Risk for Insurers and Insureds

July 9, 2025



# About RMC

canada's insurance  
defence network



vos avocats en assurance  
partout au canada



# Today's Panel



**Edmonton**  
Brian Murnaghan  
CBM Lawyers



**Toronto**  
Vagmi Patel  
Blaney McMurtry LLP



**British Columbia**  
Wendy Serné  
Northpoint Legal



# Ontario

Vagmi Patel  
Blaney McMurtry LLP  
Toronto



# PFAS

Per- and poly-fluoroalkyl substances (PFAS), also known as “forever chemicals,” are chemicals with strong fluorine-carbon bonds

Commonly found in a range of materials and applications, including:

waterproof textiles, grease resistant paper, lubricants, coatings on electronics, non-stick cookware, diapers

There are thousands of PFAS (estimates range from 4700 to 14,000) in over 200 applications

PFAS do not disintegrate in the environment

PFAS ingested, absorbed, and inhaled – resulting in associated health harms

# PFAS Litigation in the U.S. – Setting the Stage



3M faced class actions from public water utilities for PFAS in firefighting foam (AFFF)



**\$12.5B** settlement reached with U.S. water utilities in June 2023 (paid over 13 years)



Additional **\$1.185B** settlement by Chemours, DuPont, and Corteva



Over half of U.S. state attorneys general have sued PFAS manufacturers



3M to pay **\$10.3B+** to resolve drinking water contamination claims

# Ontario: NRC Class Action – Egan et al. v. National Research Council of Canada et al.



Class action certified against the **National Research Council (NRC)**



NRC admitted its fire-testing lab was the source of PFAS contamination



Affected area: **Ramsay Meadows**, a residential development on well water



PFAS detected in **10–15 homes**, with broader claims for diminished property values



NRC provided bottled water, filters, and testing—but **delayed notification** raised concerns

# NRC Case certified as a class action - July 7, 2021



PFAS testing revealed levels exceeding **federal and Health Canada guidelines**



NRC had known of PFAS presence since at least 2012 via consultant reports



Homeowners sought punitive damages—**denied** due to lack of high-handed conduct



Judge noted no PFAS health guidelines in place during much of the NRC testing period

# Second Ontario Class Action: Mark Mead v. 3M Company et al

Suit alleges PFAS use by 3M and others contaminated private wells

Claims include:

- Negligence
- Private and public nuisance
- Conspiracy
- Breaches of the **Competition Act**

Plaintiffs seek damages for **loss of property value and remediation costs**

National class proposed: Canadians who own wells with PFAS contamination



# British Columbia

Wendy Serné  
Northpoint Legal



# **E&O, D&O, EPL, EIL & CGL Policies: BC Perspective**

**PFAS Litigation in BC**

**Duty to Defend: CGL and Pollution Exclusions**

**Duty to Defend: CGL v. Professional Services Policies**

# McLeod v. 3M Company

**December 22, 2023**

**Exposure to PFAS without appropriate protection while a member of Canadian Navy and while working as a firefighting instructor, among other roles**

# Province of BC v. 3M Company

**June 23, 2024**

**Release of PFAS chemicals into groundwater in BC**

# Mannan v. 3M Company et al.

**September 13, 2024**

**Toxic carpets releasing carpet dust**

# Lynch v. 3M Company et al.

**September 17, 2024**

**Release of PFAS chemicals into well water**

# Status of PFAS Litigation in British Columbia

**The PFAS Class Actions in BC are not yet certified.**

**The PFAS litigation has significant breadth, from personal injury (McLeod v. 3M) to nuisance/trespass and contamination of land and water (Province of BC v. 3M)**

# Duty to Defend: CGL and the Pollution Exclusion

Two recent cases:

1. *Precision Plating Ltd. v. Axa Pacific Insurance Company*, 2015 BCCA 277 leave to appeal ref'd [2015] S.C.C.A. No. 317.
2. *West Van Holdings Ltd. v. Economical Mutual Ins. Co.*, 2019 BCCA 110.

# Precision Plating Ltd. v Axa Pacific Ins. Co.

- Precision Plating operated an electroplating business in a business complex. Its operations required the use of vats filled with toxic chemical solutions.
- There was a fire, which triggered the sprinklers, overflowing the vats and causing them to escape into four neighbouring businesses who sued the insured.
- Precision Plating claimed that its insurer, Axa Pacific owed a duty to defend these actions and provide indemnity for the loss.
- Axa Pacific relied on its pollution exclusion clause to deny coverage for defence costs and indemnity.

The issue: whether the pollution exclusion clause in the CGL excluded damage caused by a release of pollutants which was partially caused by a fire

The BCSC found coverage because the release of the contaminants were partially caused by the fire, and the exclusion clause was ambiguous.

# Precision Plating Ltd. v Axa Pacific Ins. Co.

- The BCCA held that that the trial judge should have determined whether the pleadings alleged the escape of pollutants as the source of liability which would then be a cause of the potential “loss” of the insured. The court concluded that the CGL policy did not cover a claim where liability is associated with the release of pollutants if alleged, whether it was a sole or concurrent cause.
- According to the BCCA, it is not the “true cause” of the damage that is relevant, but the true cause of the liability.

# **West Van Holdings Ltd. v. Economical Mutual Insurance Company et al.**

- **West Van Lions gate ran a dry cleaning business on a parcel of land in Vancouver since 1976, and West Van Holdings acquired that property and owned it since 1987.**
- **These companies were insured under successive CGL policies, each with a Pollution Exclusion clause.**

# West Van Holdings Ltd. v. Economical Mutual Insurance Company et al.

- The pleadings alleged that West Van used, kept, disposed of or treated, on its property, drycleaning and petroleum products which escaped into adjacent property and caused damage.
- The pleadings alleged strict liability (Rylands v. Fletcher), liability in negligence, nuisance, and a statutory cause of action under the Environmental Management Act, S.B.C. 2003, c.53 (the “EMA”).
- The pleadings alleged liability arising from the improper use of these pollutants that pre-dated the ownership of land and the operation of the dry-cleaning business.

# **West Van Holdings Ltd. v. Economical Mutual Insurance Company et al.**

- **The BCSC found the Pollution Exclusion Clauses to be ambiguous, and that they did not oust coverage for statutory retroactive property damage liability arising from migration of pollutants which may have been caused by previous landowners or operators.**
- **The BCSC also awarded solicitor and own client costs to the West Van companies.**

# West Van Holdings Ltd. v. Economical Mutual Insurance Company et al.

- On Appeal, the BCCA held that even if the pleadings showed a retroactive claim under the EMA, the CGL, an occurrence policy, would not cover events that occurred before the CGL came into effect.
- The BCCA concluded that the remaining claims under the EMA and the claims in negligence, nuisance and Rylands v. Fletcher were caught by the exclusion clauses:

[59] To succeed, West Van must show the mere possibility that a claim falls within the insurance policies. I find that it is clear that the claims in the Underlying Action fall outside the policy, either because they do not come within the initial grant of coverage or are excluded by the Exclusion Clauses. Accordingly, there is no duty to defend.

# West Van Holdings Ltd. v. Economical Mutual Insurance Company et al.

- The BCCA also reversed the decision awarding full indemnity costs to the insureds. In doing so, the BCCA noted as follows:
  - Such awards are not authorized by the BC Supreme Court Rules
  - There are other mechanisms to censure an insurer's wrongful conduct
- These comments were moot, but were followed in *Blue Mountain Log Sales v. Lloyd's Underwriters*, 2019 BCCA 240
- However, in disability insurance cases such costs have been awarded.

# Duty to Defend: CGL v. Professional Liability

*Northbridge General Insurance Corporation v. XL Specialty Insurance Company, 2021 BCSC 1682*

- Failure of transformer resulting in power outage, freezing pipes and resulting water damage to units in a Strata
- The insured, PCA Valance was an AB corporation and engineering firm providing, among other services, electrical services including testing, maintenance and consulting of the transformer.
- PCA Valance had insurance under a CGL with Northbridge and a professional insurance policy issued by XL Specialty Insurance.
- The CGL policy had an exclusion clause for “professional services”. Specialty issued a PROFESSIONAL SERVICES insurance policy to PCA Valance. Each policy had an “other insurance” clause.

# Northbridge General Insurance Corporation v. XL Specialty Insurance Company

- Northbridge accepted a duty to defend under the CGL policy (and was defending under a reservations of rights) because some of the claims may fall within the scope of its policy, but argued that Specialty Insurance also has a duty to defend.
- Specialty Insurance denied coverage and a duty to defend because (1) PCA Valence was not an engineering firm and did not perform “professional services”, so this exclusion was not engaged, and (2) their policy was in excess because it and Northbridge covered the same losses.

# Northbridge General Insurance Corporation v. XL Specialty Insurance Company

- The BCSC concluded as follows:

[73] In summary, based on the pleadings, the underlying action includes allegations against PCA Valence which, if true, could require Specialty Insurance to indemnify PCA Valence and to do so not merely as an excess insurer. The “mere possibility” test has been met on the basis of my consideration of the pleadings and the Policies. There is also some factual evidence that Mr. Bedard was performing professional services on behalf of PCA Valence, which supports this conclusion. In these circumstances, Specialty Insurance is obligated to defend PCA Valence in the underlying action for claims which may involve “professional duties and activities”, as defined in the Specialty Insurance Policy.

- The court found that Speciality Insurance also had a duty to defend.



# Alberta

Brian Murnaghan  
CBM Lawyers  
Edmonton



Blaney  
McMurtry

# Alberta



NO PFAS LITIGATION TO DATE



LIABILITY OF DIRECTORS AND  
OFFICERS IS STATUTORY



***ENVIRONMENTAL PROTECTION AND  
ENHANCEMENT ACT***, RSA 2000, C E-12

# Alberta

---

## **Liability of directors and officers**

**232** Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

## **Vicarious responsibility**

**253** For the purposes of this Act, an act or thing done or omitted to be done by a director, officer, official, employee or agent of a corporation in the course of that person's employment or in the exercise of that person's powers or the performance of that person's duties is deemed also to be an act or thing done or omitted to be done by the corporation.

# Alberta

---

Case example:

- *Alberta Recycling Company Inc. et al. v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, 15-025-027-D, 2016 ABEAB 16 (Alberta Environmental Appeals Board)*

# Alberta

- 
- Alberta Reclaim and Recycling Inc. operating as a bottle recycling depot. Did not have a proper permit initially under section 14 of the [\*Beverage Container Recycling Regulation\*](#). They ultimately received a permit to operate the Andrew Bottle Depot in Andrew, AB.

# Alberta

---

- The directors of the company were trucking in beverage containers from Yukon in order to claim the cash refund as part of the Alberta beverage container handling system. (NB: in Alberta, consumers pay a bottle deposit for *all* beverage containers at purchase. There is no such deposit in Yukon.)

# Alberta

---

The Beverage Container Management Board (BCMB) became aware of the scheme after the Andrew Bottle Depot's returns went from:

- 2010: 564,770 containers
- 2011: 6,440,010 containers
- 2012: 6,608,595 containers

# Alberta

---

- The Director of Alberta Environment and Parks, Red Deer (AEP), determined there were 15 separate infractions under the *Regulation* and assessed \$75,000 in administrative penalties (\$5,000 apiece). The Director separately assessed an economic benefit penalty of \$769,778 pursuant to the [Administrative Penalty Regulation, A.R. 23/2003](#).

# Alberta

---

- The Director of the AEP had found the directors (who were also sole shareholders) were directly liable for the execution of the scheme and also that, as directors, were vicariously liable for the actions of the company under the *Act*.

# Alberta

---

- The penalties were appealed to the Alberta Environmental Appeals Board. On appeal, the penalties were upheld and the economic benefit penalty was adjusted. The penalties were divided between the directors of the bottle depot according to the times at which they were operating the same.

# Alberta

---

- Although there was no consideration of insurance in this instance, there is one key takeaway
- There are 31 active regulations under the EPEA. Push to ensure up to date compliance from insureds at initial cover and renewals.



# TOP TAKE-AWAYS





Any questions?

# Today's Panel



**Edmonton**  
Brian Murnaghan  
CBM Lawyers



**Toronto**  
Vagmi Patel  
Blaney McMurtry LLP



**British Columbia**  
Wendy Serné  
Northpoint Legal