



## Brian Kolenda

PRACTICE GROUP LEADER  
416-865-2897  
bkolenda@litigate.com



## Christopher Yung

PARTNER  
416-865-2976  
cyung@litigate.com

### OUR SECURITIES PRACTICE

Lenczner Slaght has extensive experience in litigating securities-related disputes before the courts, including the defence of professional negligence and other claims brought against investment advisors and dealers and significant expertise defending shareholder class action proceedings. We also help clients conduct internal corporate investigations relating to potential breaches of securities and other laws either prior to, or in conjunction with, inquiries by regulatory authorities.

# Securities

*“The focus of securities regulators on taking enforcement action related to cryptocurrencies and other new technologies can be expected to accelerate.”*

### What was the most interesting development of 2023, and why?

In a rare outcome the Capital Markets Tribunal stayed enforcement proceedings in a November 2023 decision in [Canada Cannabis Corporation \(Re\)](#) on the basis of abuse of process. The underlying proceeding related to another case of alleged fraud in the cannabis sector. The respondents were said to have raised millions from investors, misused those funds and left the company depleted without ever engaging in the actual cultivation or distribution of cannabis. The Ontario Securities Commission (“OSC”) began a confidential investigation under Section 11 of the [Securities Act](#), which protected certain material from distribution. Unusually, the OSC sought (and was granted) a confidentiality order that the OSC said precluded certain material collected in the investigation from even being shared with

the respondents once enforcement proceedings began. The Tribunal, critical of this approach to lack of disclosure, stayed enforcement proceedings against the moving respondent.

### What’s the primary takeaway for businesses from the past year?

Publicly traded companies will want to pay careful attention to the Court of Appeal’s May 2023 decision in [Markowich v Lundin Mining Corporation](#). The case concerned corporate disclosures following a rockslide at a Chilean mine. Lundin disclosed the rockslide approximately one month later in a news release generally addressing the company’s “Operational Outlook.” The market reacted swiftly to the news with a one day drop of more than \$1 billion in market capitalization. A class action was brought alleging Lundin failed to make timely disclosures as required by the *Securities Act*. This case illustrates how assessing a “material fact” and “material change” can be very nuanced, highly contextual, and challenging. Issuers wanting to avoid the risk of a securities class action may choose to err on the side of caution and release information as soon as possible, but this must be balanced against other risks such as making premature disclosures if the information available is incomplete or potentially unreliable.

### What’s one trend you are expecting in 2024?

The focus of securities regulators on taking enforcement action related to cryptocurrencies and other new technologies can be expected to accelerate. As public and institutional exposure to cryptocurrencies grows, including through social media-based and other online efforts, Canadian securities regulators have reacted. Since 2017, the Canadian Securities Administrators, alone and

together with IIROC (now CIRO) have issued nine Staff Notices providing market participants with important guidance on crypto market-related matters, including [two important staff notices in 2023](#) alone related to crypto trading platforms. However, our experience has been that securities regulators have continued to expand the resources they have to enforcing securities laws against firms and individuals in the crypto markets, both in the form of investigations and enforcement proceedings, including against foreign-based crypto market participants. We believe this trend is only set to grow in 2024 and will be reflected in more investigations and proceedings being initiated in relation to alleged breaches of securities laws by those involved in crypto and other innovative technologies.