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Updating Ontario's Securities Act

Shara N. Roy was interviewed for the CBA/ABC National Magazine article *Updating Ontario's Securities Act*.

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In 2019, the Ontario Securities Commission released a report promising to slash red tape and regulatory burden in Ontario's capital markets.

Shara Roy, a partner at Lenczner Slaght, says the responses to the commission's consultations around that paper made a few things clear. Those in the market want "more tailored and flexible regulation, fewer hoops to jump through and harmonization across jurisdictions," she wrote to CBA National — with some input from her colleagues Madison Robins and Sarah Bittman, also lawyers at the firm.

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The OSC, for example, recommended an amendment to the *Act* to allow for industry-wide blanket orders, especially for exemptive relief applications, instead of issuing orders purely on a case-by-case basis. That will remove the need for each company to file for relief, one-by-one. It also indicated plans, going forward, to tailor regulations for financial technology firms — the existing regulations are "cumbersome," Roy says. All told, there were dozens of recommendations on how to cut red tape and simplify capital markets, especially for small and medium-sized firms.

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"The OSC received feedback that crowd-sourcing was not an attractive capital-raising tool, due to disharmonized rules across

Canada,” Roy says. That crowdfunding model promised to be a real market disruptor. “But in moving quickly to adapt to the market development, individual provincial regulators adopted different rules and requirements. Given the nature of crowd-sourcing, companies were generally required to meet those requirements Canada-wide. As a result, the cost of complying with what was meant to be innovative investment regulation instead led to reduced use of the market tool.”

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Roy and her colleagues write that the 2018 Supreme Court reference “may have paved the way forward for harmonized national securities regulation, but implementing such nationwide regulation will take time. Not all provinces have signed on.” To that end, waiting around for the other provinces to get on board, before embarking on a full-scale fix-up of Ontario’s regulatory regime, may be untenable. “The review of Ontario’s Securities Act is long overdue.”

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“It remains to be seen how the CSA’s guidance [on climate change and gender diversity] may be affected by the task force’s mandate,” Roy says. “Will the ‘burden’ of equitable and environmental disclosure be viewed as too ‘costly’ to meet the Ontario government’s stated objective of eliminating red tape?”

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Roy and her colleagues describe somewhat of a culture shift coming to the OSC. At present, the *Act* is geared towards protecting investors and ensuring that costs and regulations saddled onto businesses are commensurate with the aims of the regulations themselves. “The Ford Government has asked the OSC to weigh the economic costs of any new regulation against benefits to stakeholders – essentially a cost-benefit analysis,” she writes.

“We can therefore expect to see changes to the *Securities Act* that enshrine the cost-benefit principle more directly,” she adds. In other words: Expect to see the “open for business” mentality come to the securities regime. “There is little discussion of bolstering investor protection, but balancing those interests will be a key objective for the task force.”

Even if a longtime political operative chairs the task force, Roy points out that there is a depth of talent on the bench, including the former deputy commissioner of the Financial Consumer Agency of Canada. Balancing investor protection with that business-friendly approach will be the crux of the taskforce’s work.

A significant development since the last time the *Act* was reviewed has been enforcement. Roy points out that, in recent years, the OSC has started the Joint Serious Offences Team — a partnership with the Ontario Provincial Police and the RCMP to investigate offences under the *Securities Act*.

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