
A Corporate Law Makeover

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Ontario's Ministry of Government Services recently published a Report calling for the transformation of the province's business legislation. A comprehensive review of Ontario's corporate legislation is long overdue. Not only does it fail to accommodate technological advancements, many provisions also create barriers to successful business development and innovation. To remain effective and relevant, corporate legislation must be updated to account for the impact of today's global economy and technological advancements. The recommendations in the Report are aimed at enhancing Ontario's position as a place of choice for businesses and creating a corporate climate in which businesses can thrive. The Report focuses on the need to keep corporate law current, calling for a system of regular review and consultation. Ongoing maintenance of corporate legislation would encourage the flexibility that corporate law needs in order to account for today's evolving economic environment.

The recommendations in the Report are extensive; however, the major focus is on the need to foster Ontario's reputation as an attractive jurisdiction for businesses. The Report recommends that the Ontario Business Corporations Act be updated to include provisions with respect to increased clarity regarding the liability of corporate directors, improving the accessibility of rights and remedies to shareholders, and eliminating strict Canadian residency requirements for boards of directors. Allowing shareholders more autonomy in composing corporate boards of directors would significantly enhance Ontario's position as a corporate destination. The current provisions of the Act are unattractive to foreign investors, pushing them to seek incorporation in jurisdictions such as Nova Scotia where such stringent requirements do not exist. Furthermore, the Report suggests provisions that contemplate the effect of technology on business in order to account for electronic meetings and communications, which are currently hindered by the need for formal consent and approval.

Updated legislation would promote Ontario's position as a leading business jurisdiction, encourage innovation and attract investment. The changes called for in the Report would also support greater market certainty. Developing laws that

encourage market confidence directly correlates with successful businesses and therefore a successful economy. Encouraging market confidence also stems from the recommendation calling for the repeal of the provincial Fraudulent Conveyances Act and Fraudulent Preferences Act, and the adoption of the federal Reviewable Transaction Act (RTA). The RTA contains clear rules that would reduce creditor uncertainty and help to increase access to credit for growing businesses. The Report also encourages the repeal of the Bulk Sales Act (BSA), as Ontario is the only province that has yet to do so. While the BSA was drafted with the intention of protecting trade creditors, there is now new legislation that does a better job of this, such as the Personal Property Security Act (PPSA) and the Bankruptcy and Insolvency Act (BIA). The BSA is a burden for businesses, as the necessary compliance documents that it requires can add to legal fees. The Report also outlines significant revisions with respect to the PPSA, which would encourage harmonization across Canada and further modernization of laws relating to secured lending. The Report recognizes the need for a synchronized approach to corporate law across Canada. While most other provinces have updated their corporate laws, Ontario remains an outlier in this respect.

Despite the call for change, business owners shouldn't hold their breath. Changes to corporate law in Ontario have historically been subject to major delays. The new Ontario Not-for-Profit Corporations Act, for example, was enacted in 2010 and likely won't come into effect until at least 2020 - more than ten years later! While the Report and its recommendations are a step in the right direction, legislative change on this scale will likely take a significant amount of time.

About the Author

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