

NEW BUSINESS LAW ADVISORY COUNCIL TO MODERNIZE ONTARIO'S BUSINESS LAWS

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The Ontario government has created a new Business Law Advisory Council to put forward recommendations to modernize and reform Ontario's corporate and commercial laws to make Ontario a more competitive jurisdiction in which to do business.

Among the eleven members of the Advisory Council is McMillan's Robert Scavone. Details of Rob's appointment can be found [here](#). Advisory Council members will serve an initial term of up to 18 months and can be re-appointed for up to three years in total. For more information on the Advisory Council, click [here](#).

The Advisory Council was established following recommendations made to Ontario's Minister of Government and Consumer Services by the Business Law Agenda Stakeholder Panel, a volunteer panel of expert corporate and commercial lawyers and legal academics, in its June 2015 report [\[1\]](#) (which can be accessed [here](#)). Among other things, the panel recommended that a regular formal process be put in place to continuously review and update Ontario's corporate and commercial statutes, using the insights and opinions of legislative experts and produce evidence-based recommendations for a responsive and efficient business law framework.

With no pre-determined agenda or priorities, the Advisory Council may choose to consider some or all of the recommendations set out in the panel's report, which include modernizing Ontario's corporate and partnership laws, updating archaic creditor protection legislation and modernizing and harmonizing personal property security law. Some of the more notable recommendations are described below.

Business Corporations Act

The report included many recommendations to modernize Ontario's *Business Corporations Act* ("**OBCA**"), including:

- facilitating electronic communication to shareholders and directors and eliminating needless barriers such as the requirement to send various notices by prepaid mail;
- providing greater certainty about the standards to which officers and directors should be held in the performance of their duties as well as their liabilities and the protections and defences available to them;

- allowing shareholders to vote against board candidates instead of simply voting for them or withholding votes;
- eliminating the requirement that 25% of directors be resident Canadians; and
- extending the rights and remedies available to the nominal registered shareholders of public companies (usually clearing agencies) to the beneficial owners.

Limited Partnerships Act

The Panel also recommended updating the *Limited Partnerships Act* ("**LPA**") to reduce the risk faced by limited partners of losing their limited liability if they take any part in the "control" of the business. Unlike Ontario, Manitoba has narrowed the scope of limited partners' liability to protect them even where they take an active role in the limited partnership's business, making it a jurisdiction of choice. The Advisory Council may consider updating the LPA along similar lines to position Ontario as a more competitive jurisdiction for limited partnerships.

Limited Liability Corporations

The Advisory Council may also consider whether Ontario should be the first Canadian province to allow for limited liability corporations ("**LLCs**"). LLCs are popular in the U.S. because they have some of the tax benefits of a partnership (such as pass-through treatment for deductions), and some of benefits of a corporation, such as limited liability for investors.

Unlimited Liability Corporations

Another item on the Advisory Council's agenda may be unlimited liability corporations ("**ULCs**"), which can now be formed in Nova Scotia, Alberta and British Columbia. A ULC is a corporation whose shareholders have unlimited liability for the ULC's obligations in certain circumstances. They provide some flow-through tax benefits to certain foreign investors. Allowing ULCs to incorporate in Ontario could help Ontario become a preferred jurisdiction for investors seeking this corporate structure.

Other Commercial Law Reforms

The Report sets out a host of other recommendations that the Advisory Council may consider as well, including:

- replacing the archaic *Assignments and Preferences Act* and *Fraudulent Conveyances Act* with a modern Reviewable Transactions Act;
- repealing the outdated *Bulk Sales Act*, as every other province has done;
- amending the *Personal Property Security Act* ("**PPSA**") to:

- allow security interest in cash collateral to be perfected by "control" as well as registration;
- confirm that licenses can be used as collateral;
- facilitate the use of electronic chattel paper to raise funds;
- updating franchise legislation to create more disclosure certainty;
- streamlining business information and registration legislation..

The Advisory Council holds its first meeting on March 23. We will keep you posted on its recommendations.

by John Clifford and Sean Brandreth

1 Ontario, Ministry of Government and Consumer Services, Business Law Agenda: Priority Findings & Recommendations Report, by the Business Law Agenda Stakeholder Panel, proposal number 15-MGCS009 (Toronto: Ministry of Government and Consumer Services, 2015).[ps2id id='1' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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