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Reforming Ontario's Business Laws

Remarks by

The Honourable Jim Watson, MPP

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Good afternoon, ladies and gentlemen, and thank you for having me here today.

As Minister of Consumer and Business Services, I often have the opportunity to speak about the government's efforts to help Ontario's consumers.

It's not nearly as often that I have a chance to speak about what we're doing for business, so I hope you'll forgive me if I get side-tracked and start giving you tips to avoid being taken for a ride when buying a used car.

In exchange, I'll do my best to stay on topic and speak with you about some of the McGuinty government's plans to reform corporate and commercial law in Ontario.

I'm sure nobody would be surprised to hear that there are a number of priorities that the government is pursuing.

Just like you, we have competing demands for limited time and resources, and we must choose what to do, and when.

Our government has made no secret that health care and education are the top priorities.

The challenges we face in both fields are numerous and well known, and they need our attention to make sure those services are the best they can be.

Ontarians deserve and expect no less.

But they also expect that we will have the foresight to invest our time--their money--in ways that will help ensure the long-term health of the people, the economy, and the services it affords.

The question of course, is how does a government deal with competing demands on public services and the time it takes to reform corporate law?

The answer is easy: they're not competing demands at all.

Take, for example, consumer protection.

In July, our government will be proclaiming the most comprehensive changes to consumer protection statutes in more than 30 years.

This new law will be the culmination of a 3 year-long process to overhaul 4 statutes to give consumers up-to-date protections including longer cooling-off periods, enhanced cancellation rights, and stronger disclosure requirements in areas all the way from timeshares to car repairs.

We're doing this because protecting consumers also helps business by removing shady operators from the scene to clear the way for honest merchants.

We are taking care of consumers and businesses at the same time by taking care of the marketplace.

Simply put, smart consumers are good for business and the opposite is also true.

In a similar way, we are taking steps to meet the growing needs of health care and education by taking care of the economy that supports it.

Last year, Ontario's gross domestic product was \$518 billion.

That makes it the 7th largest economy in North America, ahead of Ohio and Michigan, manufacturing giants.

On a global scale, it's about the same as Belgium, Sweden or the Netherlands.

Just as we took the leadership to bring forward important consumer protection legislation, we are going to focus our efforts on modernizing our corporate laws to provide the stability and predictability that businesses need to compete in the global economy.

The sheer size of Ontario's economy and its disproportionate number of large corporate headquarters means that our laws have a ripple effect across the country.

It's a role that we take very seriously, and know that other provinces are looking to Ontario to provide leadership in making sure Canada maintains its attractive investment climate.

That's why, in last week's budget, Minister Sorbara announced that the McGuinty government is moving forward on legislative reforms to help ensure Ontario maintains its status as the economic engine of Canada and a major power in North America.

Our plan to reform commercial and corporate law will be implemented in 3 phases.

The first phase will focus on bringing in securities transfer legislation to reflect that modern markets rely on electronic records, not paper certificates, to prove ownership.

Phases 2 and 3 will focus on making further updates to our laws to make them more consistent with other laws in Canada and internationally.

They will be aimed at updating Ontario's business-related statutes to be more relevant to today's marketplace, and help ensure that we remain a competitive and an attractive business environment.

Rolling out these changes in phases means that we will be able to deal with an enormous amount of material in workable and manageable portions.

It will let us address the most urgent needs first while ensuring that all issues receive their due attention.

Our government recognizes that modern securities transfer laws are fundamental to the competitive position of Ontario in the global economy, especially in relation to the US where all 50 states have adopted modern securities transfer laws.

That is why I plan to bring forward securities transfer legislation in the next session of parliament to help ensure that Ontario remains a viable, attractive and preferred investment destination for businesses and their capital.

The bill will respond to the recommendations of the Standing Committee on Finance and Economic Affairs in their report on the “5-Year Review of the Securities Act”.

If passed, the bill will improve the competitive positions of our financial institutions and markets by providing the legal certainty investors need to be confident in their decisions.

It will bring greater certainty to transfers by improving confidence in settled securities trades and updating statutes that allow for the use of security portfolios as collateral for a loan.

In addition, it would reduce transaction costs and the risk of litigation.

Harmonization with American law will also help facilitate cross-border transactions, helping to ensure that the Ontario market remain competitive.

The bill will include complementary changes to the Ontario Business Corporations Act and the Personal Property Security Act, to reflect revolutionary advancements in the way securities are held and transferred on Bay Street and around the world.

The Ontario Bar Association has been very active in providing input for this legislation, and I want to thank you for your continuing hard work and dedication in helping to develop the proposal for the Uniform Securities Transfer Act.

I recently met with the Governor of the Bank of Canada, David Dodge, who also reinforced the need for action on this file.

Ontario needs to have a system of laws that not only allows us to compete in Canada, but also allows us to compete on the world stage.

It has been some time since changes have been made to our legislation to make sure that they reflect the realities of the world around us.

The Business Corporations Act has not been significantly updated since 1983, and the Personal Property Security Act came just behind it in 1989.

Since that time, the Ontario economy has grown more than 95%.

But simply focusing on GDP growth—though remarkable--misses the point.

Consider this: In 1980, 3.3 billion shares were traded on the floor of the Toronto Stock Exchange, worth about \$30 billion.

19 years later, more than 29 billion shares were traded worth about \$530 billion dollars.

And in just the 4 short years after that, 56 billion shares changed hands; nearly twice as much trading in one-fifth the time.

Since 1997 the Toronto Stock Exchange has been fully electronic, working in megabytes, not mailboxes.

Our package of laws, however, does not reflect this evolution.

Our legal framework for transferring securities has simply not kept up with the pace of change.

And while our current legislation has proven to be remarkably adaptive, it would be unwise to assume that yesterday's laws will meet the needs of tomorrow's market.

To continue the growth we have experienced, our laws must provide certainty in rapidly changing international markets.

Introducing legislation that supports an indirect holding system, and addresses the reality that most securities are held in electronic records rather than paper certificates, will help provide the predictability and stability that investors and intermediaries need.

We plan to make these changes this year, and my ministry has already begun work to prepare this bill.

One of the biggest challenges in government today is taking an integrated approach to issues that span multiple ministries.

Coming to effective solutions requires cooperation and collaboration to reach our goals and we need more cooperation and harmonization within government—and across governments--to provide greater certainty to capital markets.

I will be working with my Cabinet colleagues to make sure that we have a consistent and coordinated approach to business law reform.

My colleague Gerry Phillips, the Chair of Management Board, has announced the establishment of a panel of knowledgeable and well-respected individuals from across the country to advance the design of a common securities regulator and demonstrate how it can serve the interests of all provinces and territories.

A common regulator is key to making Canada's capital markets more competitive and more efficient.

Even though the Ontario economy has grown considerably, we are still at an inherent disadvantage to far larger capital markets in the US, Europe and Asia.

By the sheer size of their markets, they have local access to sources of capital that simply don't exist in Canada.

And our disadvantage is compounded by the fact that, within Canada's relatively small capital market, only 16% of public companies benefit from access to investors in all provinces.

We need a common securities regulator to realize the economic growth opportunities that are created by a competitive and effective equity market.

If we are to realize the full growth potential of our economy, we need to make ourselves more attractive to foreign investment by improving the efficiency of our markets.

Creating a common securities regulator is a crucial step to ensuring Ontario—and Canada—maintain their edge on a world stage and I am happy to see that Minister Phillips is continuing his work to bring this much-needed change to Canadian markets.

For my ministry, the second phase of our plan will focus on making additional changes to the Business Corporations Act to modernize it and make it more consistent with its federal counterpart, the Canada Business Corporations Act.

Competing globally means more than our companies buying and selling their wares outside of our borders.

Large or small, corporate boards of directors play a crucial role in building strong competitive businesses.

But the Ontario Business Corporations Act still requires boards to be composed of mostly Canadian residents.

As a result, corporations may be forced to trade the most qualified and experienced people for those who are geographically convenient.

It's an unnecessary limitation that few other jurisdictions require, and we are going to seriously consider eliminating it.

As part of this comprehensive review of the Business Corporations Act, we will also be examining a number of other issues including unanimous shareholder agreements, unlimited liability corporations, and the liability of directors.

My ministry remains committed to working with the Ontario Bar Association to implement improvements to the Personal Property Security Act.

The second phase of changes to business laws will take a great deal of careful consideration and broad consultations.

Once this second phase of amendments is completed, the government will move forward on changes to the Corporations Act that will modernize the laws and reduce the cumbersome regulatory burdens on charities and not-for-profit corporations.

The last time the Corporations Act received substantive updates was about 50 years ago.

To give you some historical context, this is about the same time that Ray Kroc bought a small restaurant from two brothers named Dick and Maurice McDonald; a mouse named Mickey became the mascot of an amusement park in California, and; Canada's first subway line was opening between Union and Eglinton Stations.

I'm sure you don't need to be persuaded that it's time to update this statute.

A great deal has changed in every aspect of Canadian life since the Corporations Act was last amended, and bringing it up to date will be much more than simply a fine-tuning exercise.

There are certain goals that we will want to achieve, and we will be consulting widely on how best to arrive at them.

In the end, we need to streamline the statutory requirements to incorporate not-for-profit corporations, and reduce their administration costs to comply with regulations so they can dedicate more of their resources to helping those in need.

Moving forward on bringing the Corporations Act up to date will be no short task.

Careful consideration must be given to the goals of the legislation, what effect the current statutes are having, and what we want to accomplish with any amendments.

The same is true for all aspects of corporate law.

There are some areas where there is a consensus about what we should do, and in those areas, we will act quickly, namely Uniform Securities Transfer legislation.

As I mentioned, before the end of the year, I plan to bring forward a bill to the legislature to address the evolutionary changes brought about by the electronic transfer of securities.

Ontario needs a new law that provides the structure to address indirect holdings and recognizes the reality of electronically transferring securities.

This is our government' first priority in bringing Ontario's business laws up to date, and will be the focal point of phase one amendments.

Moving beyond that, there is a clear need to bring other aspects of the Business Corporations Act up to date.

Residency requirements can hinder a company's ability to build strong and competitive businesses, but more generally, we need to take a careful look at how other statutes reflect the reality of today's markets and the standards of investors and consumers.

Updating business law in Ontario will be an exhaustive process, but this is not an exhaustive list of the issues.

I know there are a number of other issues that the bar association and other stakeholders want to address, and I am open to discussing any changes that will help ensure the growth of Ontario's economy and meet the needs and expectations of consumers and investors.

We will take the same approach to reforming Ontario's corporate laws, as we undertook with the comprehensive modernization of Ontario's consumer protection laws – we will take the time necessary to consult with all stakeholders to get this right.

Ontario is in a unique economic position.

As the economic engine of Canada, our success helps finance the rest of the country's goals.

From health care to helicopters, Ontario pays the lion's share of the federal budget.

It is a role we are proud to play, but if we are to maintain this position, and propel the nation's economic growth, we have to ensure that our laws provide the best possible atmosphere to do business.

Our standard of living and our ability to contribute to an entire nation are second to none.

But we cannot take that for granted.

We must move forward and ensure we can maintain this status.

By putting in place the structures to ensure a competitive Ontario, and the continued hard work by the people of Ontario, I know that we will be successful.

Thank you for your time.