

February 25, 2014

Director General
Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor
Ottawa, Ontario
K1A 0H5

Dear Madam:

Re: Consultation on the *Canada Business Corporations Act*

I would like to submit a comment made to the Director of Compliance, Cheryl Ringor during Corporations Canada's Toronto client consultation on February 19, 2014.

One of the intents of the statutory reform that will lead to repeal of the *Canada Corporations Act* as it still pertains to non-share corporations until October, 2014 is to harmonize federal laws. Accordingly, in order to harmonize federal laws, the *Canada Business Corporations Act* should be further amended to codify the standard of a competent officer to mirror subsections 150(1) and 150(2) of the *Canada Not-for-Profit Corporations Act* which are reproduced below for reference:

Officer — reasonable diligence

150. (1) An officer has complied with his or her duties under [subsection 148\(2\)](#) if the officer exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on a report of a person whose profession lends credibility to a statement made by that person.

Officer — good faith

(2) An officer has complied with his or her duties under [subsection 148\(1\)](#) if the officer relied in good faith on a report of a person whose profession lends credibility to a statement made by that person.

In addition, one of the perennial objections to the provisions of the *Canada Business Corporations Act* and the provincial business corporations acts modelled on the federal act is that none address the responsibilities, obligations or liabilities of officers if an unanimous shareholder agreement is in effect. While the directors' powers can be removed in whole or in part resulting in the same directors being fully or partially absolved of liability for decision-making, if the officers continue to perform obligations imposed on them by the board of directors, are the officers to assume the liability that the directors would ordinarily assume had an unanimous shareholder agreement not have been implemented? In order that this question does not remain a rhetorical one, the next round of amendments should address officer liability and how a corporation is expected to continue to operate under the effect of an unanimous shareholder agreement if previously enacted directives of the board are to remain in effect while the directors are powerless and free of liability.

Thank you for your consideration.

Regards,

Laura S. Uyenaka