



THE VOICE OF THE SHAREHOLDER

December 2, 2003

Honourable Mr. Gregory Sorbara
Minister of Finance
Government of Ontario
MPP, Vaughan - King - Aurora
7 Queen's Park Crescent – 7th Floor
Toronto, Ontario
M7A 1Y7

Re: Bill 198 and Provisions for Civil Liability for Continuous Disclosure in the Secondary Market

Dear Mr. Sorbara:

The Canadian Coalition for Good Governance is a group comprised of 28 large pension funds and money managers in Canada with total net assets under management of just over CDN \$500 billion. As an organized group, each of us cares very strongly about corporate governance practices in Canada. We are writing to welcome you to your new position and to wish you many years of success with your portfolio in the service of the Province of Ontario.

We are also writing you to bring to your attention the current state of a piece of legislation that we feel has been overlooked by the previous provincial government and to ask you if you would redress the situation as soon as possible.

On December 9, 2002 Bill 198: Keeping the Promise for a Strong Economy (Budget Measures), 2002 received Royal Assent as Statutes of Ontario, 2002 chapter 22. On April 7, 2003, many helpful amendments to the Ontario **Securities Act** came into force with the exception of Part XXIII.1 Civil Liability for Secondary Market Disclosure. This part of Bill 198 received Royal Assent on December 9, 2002 but did not come into force on April 7, 2003 and was to come into force on a date proclaimed by the Lieutenant Governor. To date, this has not occurred. Various *pro forma* technical amendments to Part XXIII.1 Civil Liability for Secondary Market Disclosure were then contained within another omnibus bill by the previous government. This was Bill 41: An Act to Implement Budget Measures (2003). This bill was given its first reading in May 22, 2003. This bill was also debated in the course of the 4th session, 37th Legislature on the following dates: June 19th, 24th, 25th, and 26th. However with the last provincial election and dissolution of parliament, we have concerns that this bill is now defunct without having even received second reading.

Bill 198 and the amendments contained within Bill 41 are important because they establish the creation of a statutory right for investors in the secondary market to sue companies and other responsible persons for oral or written misrepresentations or a failure to make timely disclosure. The civil liability scheme contained in Part XXIII.1 of Bill 198 is a statutory framework for which all of us have long hoped would be enacted.

The civil liability scheme for investors is important to us because it allows a broad group of investors to re-enforce the aspects of securities legislation that the regulator may not wish to address for various reasons. We also feel that a civil liability scheme provides for a type of “continuous shelf registration” that would allow reporting issuers to issue stock and other securities without the need of preparing a long form prospectus every issue. This legislation would surely streamline this aspect of the securities industry, while maintaining high levels of disclosure.

We feel that there are safeguards for the potential defendants of such a suit in this legislative scheme. The plaintiff to any suit filed under this scheme must first obtain the leave of the court before filing a statement of claim. In order to be in a position to grant leave to file, the court must be satisfied that the proposed action fills two pre-conditions that set a very high threshold for the plaintiff to meet:

- (1) the plaintiff must show to the court that the suit is brought in good faith, and
- (2) the court must be convinced that the suit has a reasonable prospect of success at trial, [section 138.8 of Part XXIII.I Civil Liability].

This last hurdle is a very high threshold for the plaintiff because it mandates a preliminary review of the proposed action by a judicial body, thus preventing class action suits that do not have a firm basis in law. We also note that there is also the safeguard of proportionate liability built into this legislation [section 138.6 of Part XXIII.I Civil Liability]. Finally, knowing that the judiciary are presently inclined towards the non-certification of class action lawsuits in this province, we urge you to consider the proclamation of Part XXIII.1 of Bill 198 and the amendments contained within Bill 41 with great speed.

The members of the Coalition are of the opinion that the promotion of good corporate governance practice is essential if the companies incorporated in this province are to compete in a global market. I would be more than happy to meet with you to discuss any of these suggestions at any time.

Sincerely,

David R. Beatty, O.B.E.
Managing Director
Canadian Coalition for Good Governance

c.c. Mr. Robert Christie
Deputy Minister of Finance

Mr. Michael Colle,
Parliamentary Assistant (to the)
Minister of Finance

Mr. David Brown,
Chair, Ontario Securities Commission



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CANADIAN COALITION FOR GOOD GOVERNANCE MEMBERS:

Acuity Investment Management Inc.
Alberta Teachers' Retirement Fund Board
AMI Partners Inc.
Aurion Capital Management Inc.
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management
Connor, Clark & Lunn Investment Management
CPP Investment Board
Franklin Templeton Investments
Greystone Managed Investments Inc.
Hospitals of Ontario Pension Plan (HOOPP)
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Jarislowsky Fraser Ltd.
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KBSH Capital Management Inc.
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Engineers in Ontario
UBS Global Asset Management