Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

Via email – business.law@mgs.gov.on.ca

June 7, 2006

Business Law Modernization
Ministry of Government Services – Policy Branch
250 Yonge Street, 35th Floor
Toronto, Ontario M5B 2N5

Dear Sirs/Mesdames:

Re: Business Law Modernization Consultation – April 3, 2006

The Canadian Coalition for Good Governance is comprised of over 45 institutional investors managing in aggregate over $900 billion of invested capital. The mission of the Canadian Coalition for Good Governance is to represent Canadian institutional shareholders through the promotion of best corporate governance practices and to align the interests of boards and management with those of the shareholder. We seek to improve the performance of publicly traded corporations through the promotion of good governance practices across Canada. More background information can be found at our website www.ccgg.ca.

It is from this perspective that we submit the following comments in response to the April 3, 2006 business law modernization consultation paper.

Proxy solicitation reform – Part VIII of the OBCA:

Part VIII of the OBCA should be amended in a manner consistent with the amendments made to Part XIII of the CBCA in 2001, to allow investors to effectively communicate among themselves. We anticipate that regulations soon be enacted to make Part XIX of the Ontario Securities Act consistent with Part XIII of the CBCA, and we see no principled basis for the OBCA to be inconsistent with the CBCA and the Securities Act in this area. We are disappointed that this topic does not appear in the consultation paper. It is critical to effective corporate governance in publicly traded corporations that shareholders be entitled to communicate with one another freely about corporate affairs and proxy proposals, without undue restrictions. This is the most significant current policy issue for the Coalition, and we find the delay in keeping the OBCA up-to-date in this area (when compared to both the CBCA and US regulation) unacceptable.

120 ADELAIDE STREET WEST, SUITE 2500, TORONTO, ONTARIO M5H 1T1
TELEPHONE: (416) 868-3585 FAX: (416) 367-1954 WEB SITE: WWW.CCGG.CA

Majority Voting

Currently, the voting for directors is based on a "plurality system" whereby shareholders vote either "for" a director or "withhold" their vote (i.e. do not vote) for a director. In such a system, “withhold” votes do not count and technically a director needs only 1 "for" vote to be elected to the board.

The Coalition does not agree with plurality voting as it does not provide shareholders with an effective voice in the director election process nor does it foster a sense of accountability between the shareholders and their agents, the directors. For the director election process to truly empower the shareholder and create an accountability link between the board and the owners, a shareholder must have the option to either vote for or against the board nominees. That is, to be elected (or re-elected) to a board, a director must receive the approval of at least 50% +1 of the voting shareholders.

The United Kingdom, Australia and New Zealand as well as other European nations have majority voting requirements in place. As the Ontario Government contemplates amendments to the OBCA, we believe it is the ideal time to consider requiring director elections to be held via majority voting.

Section 4.1.2 – Shareholders’ Access to Disclosure:

The Ontario Business Corporations Act (OBCA) should be amended to allow shareholder access to records of directors’ meetings that contain conflict of interest disclosures. Shareholders may otherwise be unaware of the conflicts that a corporate director has in relation to the affairs of the corporation, and this type of provision would permit interested shareholders to become fully informed about material contracts and transactions where directors, the representatives of the shareholders, are conflicted.

We do not believe that this provision can be expected to impose any material additional burdens and costs on OBCA corporations; Canada Business Corporations Act (CBCA) corporations are subject to this type of disclosure requirement, and we are unaware of CBCA corporations having incurred significant burdens or costs because of it.

Section 4.1.4 – The Remuneration Exception:

The OBCA should be amended to prohibit a director from voting on a contract or transaction that relates primarily to the director’s compensation as an officer, employee or agent of the corporation. It is inconsistent with the expectations of investors in publicly traded corporations that an inside director be entitled to permit such a director to approve his or her own remuneration from the corporation. A directors of a corporation whose own compensation is before the board faces a serious conflict of interest, with a potentially irreconcilable difference between what is good for the individual and what is good for the shareholders.

Section 4.3.4 – Limits on the Purchase of Liability Insurance:

We do not agree with the proposal that the OBCA be amended to allow corporations to purchase liability insurance to benefit directors and officers who breach their fiduciary duty. Allowing directors and officers to be insured against breaching their fiduciary duties would

encourage directors and officers to take greater risks in regards to breaching their fiduciary duties, and reduce their incentives to comply with those duties. We do not believe that there is currently any lack of qualified individuals that are willing to serve as directors and officers of OBCA corporations because of the prohibition on insurance for breaches of fiduciary duties.

Section 5.2.1 – Allowing Beneficial Shareholders to Submit Proposals:

The OBCA should allow beneficial shareholders (as well as registered shareholders) to submit shareholder proposals. A vast preponderance of all Canadian institutional shareholdings in public corporations are registered in the name of nominee intermediaries. It creates undue and unnecessary administrative work to require that shareholdings be re-registered in the name of the beneficial shareholder in order for the investor to submit a valid shareholder proposal. There may well be instances in which the procedural steps required for re-registration preclude the investor from making a proposal in a timely manner, despite the fact that it intended to do so. The CBCA has permitted beneficial shareholders to submit shareholder proposals since 2001, and we are unaware of this having caused materially incremental costs for CBCA corporations.

Section 5.2.2 – Imposing Minimum Ownership and Length of Ownership Requirements:

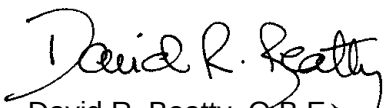
While we do not oppose the introduction of a minimum share ownership requirement in order for shareholders to be eligible to submit proposals (similar to the CBCA), we do not support minimum length of ownership requirements. An owner of a corporation with a material stake should not be prohibited from making a proposal for the shareholders' meeting simply because the owner has not held shares in the corporation for a particular prior length of time; that owner may well have a genuine interest in the corporation's long-term affairs.

5.2.3 – Maximum Length of Proposals and Supporting Statements:

We do not support adopting any word limit to proposals and supporting statements. The two hundred word limit for supporting statements appears to be overly short for complex proposals, and we believe that imposing a limit would restrict a shareholder's right to propose more complex proposals and/or by-laws.

We apologise for not having these comments to you by your stated deadline.
If you wish to discuss these comments, please contact me. Thank you.

Yours truly,



David R. Beatty, O.B.E.
Managing Director