Ontario Considering Advice on "Dual-Purpose" Corporations

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The government of Ontario is about to start assessing advice that it has solicited from business and professional experts on the shape that legislation allowing for “dual-purpose” business corporations might take.

The dual purposes of such corporations would be financial profit and social good that extends beyond the creation of jobs and income.

Historically, the law has been taken to oblige corporations and their directors and officers to concentrate uniquely on financial profit. But, in recent years, there has been a trend among businesses to adopt a “triple-P bottom line” – profit, people, and planet.

The provincial government has said it wants to “support and attract both entrepreneurs and investors to do business in Ontario while contributing to the social good.” The question is how to achieve that when directors and officers fear they will be found liable for compromising profit to other interests?

Last summer, the province asked corporate community stakeholders for comment on how legislation allowing for dual-purpose corporations might be structured. The comment period concluded in May, 2015.

The province received submissions from various parties, including one from the authors of this article. In our submission, we argue that the *Ontario Business Corporations Act* (OBCA), and the business-judgment rule within it, should be amended to:

- permit corporations to incorporate as benefit corporations or amend their articles and become benefit corporations… (This would) provide their directors and officers with enhanced freedom to pursue social goals in addition to profit-maximization without fear of potential liability for doing so;
- incorporate into the statute the common law principles set out in the BCE decision of the Supreme Court of Canada (which recognized that the legitimate interests of corporations go

beyond profit alone.) In considering what is in the best interest of the corporation, directors should be permitted to consider not only the interests of shareholders, but also other stakeholders, including employees, creditors, consumers, governments and the environment in their decision-making. Directors should also be allowed to consider both short and long-term interests of the corporation, including benefits that may accrue to the benefit corporation from its long-term plans, and need not give priority to any particular interest.

- protect investors, shareholders and directors… by adding provisions for "purpose, accountability and transparency"….

The benefit corporation is a strictly voluntary status and serves as a for-profit model that enables a corporation to pursue profit-generating activities while contemporaneously promoting positive effects on society and the environment. It is complementary to non-profit and charitable activities but on a much larger scale.

While social enterprise legislation can be implemented at any point along the spectrum of corporate entities, it may be most useful for achieving goals of social good if implemented at the end of the spectrum where for-profit corporations live. The goal should be to enable for-profit enterprises to take action having regard to profit, people and the planet as a complement to the activities of governments and charities.

A solution at one point in the spectrum does not necessarily exclude a solution at any other point in the spectrum or diminish the contribution of an enterprise at any other point. Community Contribution Corporation (CCC) and Community Interest Corporation (CIC)-type legislation could be effective in the non-profit/charity context; however, legislation enabling benefit corporations at the for-profit end is a solution that is likely to be adopted quickly and have a lasting impact.

For The Rise of the For-Profit Socially Responsible Enterprise In Canada, a paper by Mr. Tobin and Ms. Dalton on their submission to the Ontario Ministry of Consumer Services that also contains background on benefit corporation regimes in other parts of Canada and the United States, please ***click here****.*