

## CHANGES IN BUSINESS LAW IN ONTARIO IN 2007

*by Janusz Puzniak*

Barrister and Solicitor (Ontario)  
Attorney at Law (Missouri and New York)

**905-890-2112**

There have been significant changes to business law in Ontario since January 1 and August 1, 2007. It is not possible to fully discuss them in such a short article and anyone interested in these changes may contact the author by email at [jpuzniak@aylaw.com](mailto:jpuzniak@aylaw.com), should they have further questions.

The first important change was the introduction of the *Securities Transfer Act* (STA) which came into force as of January 1, 2007 and which has been designed to modernize the rules governing the transfer of securities in the realities of an electronic registration system, including the simplification of the rules governing the use of securities as collateral. STA modernizes the Ontario system based on American law. The coming into force of the STA triggered the need for certain changes to the Ontario Business Corporations Act (OBCA), which are already in force. There have also been changes to the Ontario Personal Property Security Act (PPSA). They are already in force, as well.

This article briefly discusses some of the new changes to the OBCA, which came into force on August 1. These changes are of greater interest to the readers of *Your Firm* than the other two acts. It is important to remember, however, that there are over 60 changes to the OBCA and this article discusses only a selection of them.

What are the most important changes? First, the current requirement that majority of directors on the boards of directors of an Ontario corporation be resident Canadians will change to 25%, and the requirement that a managing director be a resident Canadian will be eliminated. Unfortunately, the proposal to fully eliminate the requirement of resident Canadians be present on the board of directors has not been adopted due to the need for effective tax enforcement. Therefore, foreign investors who do not want Canadian representation on their boards of directors will continue to form new corporations in the provinces that do not impose that requirement (i.e., Nova Scotia, British Columbia and New Brunswick) and then register them to conduct business in Ontario. Second, the requirement of making disclosure to the corporation's shareholders of financial assistance by the corporation to a related party or for the purchase of the corporation's shares will be eliminated. Third, it will be possible to establish separate classes of shares without the need of creating artificial distinctions between the classes. Fourth, the rule that a director's duty of care extends only to the corporation and not to creditors has been codified. This means that directors will be protected by statute should the corporation's creditors be later harmed by their decisions. Fifth, there will be more steps required of a director (or rather more things that he or she will have to refrain from doing) in the case of a conflict of interest with the corporation. A director will not only have to reveal the existence of the conflict and refrain from deciding on the matter involving the conflict, but he or she will also be precluded from participating in the meetings of the board of directors when such a matter is discussed. Sixth, the ability of directors to be indemnified by or receive insurance through the corporation to protect them from liability for their actions as directors has been improved. In such cases

directors will now be able to take advantage of such assistance by the corporation during all stages of proceedings against them. Seventh, the due diligence defence will be available to the directors under more circumstances than it is the case currently. Furthermore, in making inquiries about the condition of the corporation the directors will now be able to rely on advice from other competent employees of the corporation and not only on advice given by professionals (i.e., lawyers, accountants, engineers etc.).

The changes to the OBCA, PPSA and the new STA are the key elements of the business law reform in Ontario and each director and manager of an Ontario corporation should be familiar with them.