



THE CANADIAN
BAR ASSOCIATION
Saskatchewan Branch

OFFICE OF THE PRESIDENT

March 27, 2013

Hon. Gordon S. Wyant, Q.C.
Minister of Justice
Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Dear: Minister:

Re: Proposed Legislative Amendment: *The Business Corporations Act* – Stock Dividend Freeze

The Saskatchewan Canadian bar Association is the organization that acts as the voice of this province's lawyers and other legal professionals. Currently the Association has approximately 1,100 members. The Canadian Bar Association – Saskatchewan Branch is writing you to consider a legislative amendment with respect to *The Business Corporations Act*.

The Executive received a proposal from the Taxation Law South Section and in support of their request make this submission. Their membership, which includes both tax lawyers and accountants voted and unanimously supported the proposed legislative amendment. We can further advise that it was circulated to our other Business Law sections and received no oppositions.

A stock dividend freeze is an estate planning tool. A stock dividend freeze involves the issuance of shares in lieu of the payment of a dividend. It is used by tax lawyers and tax accountants to effect certain corporate reorganizations, particularly in small, family corporations. It is normally used in instances where a person wants to bring a family member into a corporation without triggering adverse tax consequences.

In Saskatchewan, however, it is unclear whether such a practice is legally permissible under the governing corporate legislation. The wording of *The Business Corporations Act*, R.S.S. 1978, c. B-10 (Saskatchewan) (the "Act") at ss. 41(2) requires that "...the declared amount of the dividend stated as an amount of money shall be added to the stated capital account..."

This can be contrasted with the Business Corporations Act, R.S.A. 2000, c. B-9 (Alberta) or Canada Business Corporations Act (R.S.C., 1985, c. C-44) which allow the directors to add "...all or part of the value of those shares to the stated capital account..." at ss. 44(2) and ss. 43(2), respectively.

The present work-around involves amending the articles of a corporation such that declared dividends on a given class of shares can be declared to be an amount other than the redemption price of the shares issued. This work-around is not entirely satisfactory: it merely attempts to avoid the legislative ambiguity.

We respectfully ask that Saskatchewan consider amending the legislation as follows:

The current text of *The Business Corporations Act*, R.S.S. 1978, c. B-10 (Saskatchewan):

41(2) If shares of a corporation are issued in payment of a dividend, the declared amount of the dividend stated as an amount of money shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

Be replaced as follows:

41(2) If shares of a corporation are issued in payment of a dividend, the directors may add all or part of the value of those shares to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

Should more information about the proposed amendment or the reasons therefore be required, such information can be provided.

Respectfully yours,



Heather MacMillan-Brown, Q.C., President
Canadian Bar Association, Saskatchewan Branch

cc. The Hon Don McMorris, Minister responsible for Information Services Corporation