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Business Roundtable Issues Expanded "Corporate Purpose" Statement, with Commitment to All Stakeholder Interests

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The Business Roundtable, an association of CEOs of major U.S. corporations, recently issued its "Statement on the Purpose of the Corporation." The statement underscores the Business Roundtable's commitment to all stakeholders of corporations, including their customers, employees, suppliers, communities and shareholders. The statement is intended to reflect a modern standard for corporate responsibility and represents a departure from the Business Roundtable's prior endorsement of the principles of shareholder primacy – namely, that corporations exist principally to serve shareholders. It also signals that its signatories are committed to balancing the interests of the various stakeholders of their corporations, including (but not exclusively focused on) their shareholders.

Whether or not directors of corporations may, or must, consider the interests of stakeholders other than shareholders is a debate we have grown familiar with in Canada over the past 20 years.

In Canada, under the *Canada Business Corporations Act* (CBCA) (and corresponding provincial corporate statutes), directors and officers have a duty to act honestly and in good faith with a view to the best interests of the corporation. In the 2008 groundbreaking decision in *BCE Inc. v 1976 Debentureholders* (BCE), the Supreme Court of Canada (SCC) considered this fiduciary duty in the context of a proposed leveraged buyout of Bell Canada Enterprises whereby the interests of shareholders conflicted with the interests of certain bondholders. The SCC rejected the U.S. "Revlon" duty to maximize shareholder value in connection with a change of control transaction. Instead, the Court reaffirmed its decision in *Peoples Department Stores (Trustee of) v Wise* that "although directors *must* consider the best interests of the corporation, it may also be appropriate, although *not mandatory*, to consider the impact of corporate decisions on shareholders or particular groups of stakeholders," including "the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment." In doing so, the SCC upheld the principle that the fiduciary duty is owed not to any particular constituency, but to the corporation as a whole. The Court described this duty as a "broad, contextual concept" with an eye to the long-term best interests of the corporation.

Recent amendments to the CBCA have largely codified this aspect of the *BCE* decision (while adding reference to retirees and pensioners within the group of stakeholders), by providing that in satisfying their duty to act in the best interests of the corporation, directors and officers *may*, but are not required, to consider

- the interests of shareholders, employees, retirees and pensioners, creditors, consumers and governments;
- the environment; and
- the long-term interests of the corporation.

Consistent with the CBCA amendments and law established under *BCE*, while the Business Roundtable suggests that its signatories will consider the interests of stakeholders, it certainly does not create any obligations to do so. Rather, the statement provides that "while each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders." To this end, the Business Roundtable urges leading investors to support companies that build long-term value by investing in their employees and communities. The statement's signatories have committed to the following:

- Delivering value to customers, including meeting or exceeding customer expectations.
- Investing in employees, including through fair compensation and fostering diversity and inclusion, dignity and respect.

- Dealing fairly and ethically with suppliers, including serving as good partners with those companies that help them meet their missions.
- Supporting the communities in which they work, including by embracing sustainable practices.
- Generating long-term value for shareholders, including through transparent and effective engagement.

The movement – highlighted by the Business Roundtable's statement in the United States and the *BCE* decision and its codification in Canada's federal corporate statute – toward considering a broader range of stakeholders beyond shareholders may also serve to fuel the ongoing debate between proponents of long-term versus short-term outlook and value creation.

Our practical takeaway is that directors of public corporations should remain attuned to, and engaged with, a broad range of stakeholders, irrespective of perceived long-term or short-term investment horizons. More than ever, being a director of a public corporation is a delicate balancing act, requiring thoughtfulness and openness to different viewpoints, together with integrity and rigour. In meeting the standard articulated by the SCC in *BCE* that directors should act in the best interests of the corporation "viewed as a good corporate citizen," directors today face considerable challenges in carrying out their duties and responsibilities. They are required to balance the interests of many different constituencies and the competing requirements of securities laws, which in varying degrees (depending on the province) are premised on shareholder primacy, all the while keeping an eye on the ballot box where shareholders, and only shareholders, decide on who will serve as a director.

More details about directors' duties and the implications of the *BCE* case can be found in Davies Governance Insights 2018.

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