

CHANGES TO LEGISLATION GOVERNING NOT-FOR-PROFITS

Getting Ready for the ONCA

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Do you help to run a not-for-profit corporation, such as a social club, sports team, trade or professional association, cultural or faith group, or charity? Then you should read on, because the legislation governing incorporated not-for-profit groups is changing.

Federal or Provincial?

The first point to determine is whether your not-for-profit corporation is incorporated under the federal or provincial legislation as the deadlines and related considerations are very different under each jurisdiction. If your not-for-profit corporation operates in more than one province, it is probably incorporated federally, but the jurisdiction of incorporation will be set out in the corporation's letters patent.

Federal not-for-profit corporations are or will be subject to the *Canada Not-For-Profit Corporations Act* (the "CNCA"), which came into force on October 17, 2011. As we mentioned in a previous article (*Lawrences Letter*, Winter 2011), any federally regulated corporation that has not complied with the new CNCA by October 17, 2014 will be dissolved. If it has not already done so, your board should seek legal advice on how to comply with the new CNCA before October 17, 2014.

If your corporation operates only in Ontario, it was probably incorporated under the *Ontario Corporations Act*, which will soon be superseded by the *Ontario Not-For-Profit Corporations Act* (the "ONCA"). The ONCA has been approved by the Ontario legislature, but must be proclaimed into force before it takes effect. Although there will be a three-year period for most existing Ontario corporations to comply with the ONCA, it will immediately begin to apply to every Ontario not-for-profit corporation, in respect of any matter not already addressed by the corporation's existing letters patent and bylaws. This will cause some unintended difficulties for many Ontario not-for-profit corporations.

Voting Rights

The most potentially disruptive effect of the new legislation concerns the voting rights of members: classes of members currently regarded as non-voting members may gain voting rights under the new ONCA, either generally or as a result of changes affecting that class of members.

For example, many not-for-profit corporations have a class of lifetime or honorary membership which may not have voting rights currently. Under the ONCA, if the corporation wants to change any of the rights



related to that class of membership, it will have to determine who belongs to the class, serve a notice of meeting to pass a resolution to change the rights of that class, determine whether quorum is achieved, and finally, to have the members who are affected pass a resolution to limit their rights. Obviously, it will be much easier to make those changes before the ONCA comes into force.

Classes of Membership

Another serious issue with the transition to the ONCA concerns identifying the classes of membership in a corporation. Currently, many not-for-profit corporations set out the classes of members in the bylaws. Under the new ONCA, classes of membership must be set out in the articles of the Corporation (currently called its letters patent and supplementary letters patent). Implementation of the new Act may result in there being only one class of members, all with equal rights.

It is important for every not-for-profit corporation governed by the current *Ontario Corporations Act* to review its letters patent, supplementary letters patent and bylaws in contemplation of the coming changes and prepare accordingly. Lawrences' Business Law Group has extensive experience assisting not-for-profit and charitable organizations and can help you determine which changes your organization needs to make.



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