



ONTARIO NONPROFIT NETWORK

The Ontario Not-For-Profit Corporations Act

Workshop 101

The ONCA from the Operational Perspective of the Sector



ONTARIO NONPROFIT NETWORK

The Who and What of Corporate Legislation

- Provides the Organizational “bones” of corporate governance – members, Directors, corporate purposes, formation, dissolution, roles and responsibilities, meetings, borrowing etc. **It is therefore fundamental to Nonprofit operations.**
- Covers all not-for-profit corporations including
 - Charities (who are also nonprofits) (60%)
 - not-for-profit corporations providing public benefit (25%)
 - not-for-profit corporations serving their members (14%)
 - not-for-profit corporations with equity member (<1%)



Background On ONCA

- Nonprofit Legislation dates from 1917 providing social clubs for veterans
- Ontario Act Not revised for 50 years
- During that time sector grew and evolved its nonprofit way of doing things
- Viewed as last piece of corporate legislation to modernize, drafters goal was to have it similar to business corporate law and federal nonprofit corporate legislation.



How We Got to Where We are Now

- Consultation with sector in 2007, shifted ministries 3 times
- Tabled in the Legislature on closure, Spring 2010
- Ontario Not-for-Profit legislation passed in Fall of 2010
- ONN requested legislative amendments
- Government currently working on Regulations, Guides, Draft By-Laws and forms. Ready Fall 2012.
- ONCA scheduled to be proclaimed January 1, 2013

- **ONN is asking, and recommending sector organizations also ask, for a delay in proclamation until solutions can be found to the challenges in the act.**



What Proclamation Means for Nonprofit Organizations.

- Three year period after proclamation to bring bylaws into compliance (after 3 years you are automatically subject to default by-law.)
- Sections of the act not covered in an organization's by-laws take effect immediately upon proclamation.
- A guide has been prepared but because of concerns about providing legal advice (not the role of MCS) It is insufficient to assist organizations make the transition to the new act.
- A draft default By-law will be provided but organizations will definitely want to make their own.
- Regulations, guides, forms and draft by-law will be available fall 2012.
- There is no budget, distribution, or education plan to help the Sector with the ONCA.

Sector Suitable - Basic features

- Incorporation as a right, electronically (charities of course have to satisfy CRA initially and file changes with Ontario Attorney General.)
- Corporation has rights, powers and privileges of a natural person
- Statutory Duty of Care for Directors –reasonable care, honestly, in good faith and in the best interests of the corporation.
- Review engagements rather than audits for small organizations and under \$100,000 can be waived altogether with member vote.
- Allows for modern communications – email notice etc.



Suitable Basic features continued...

- Maximum term for directors 4 years- no limit on renewals,
- Directors need not be members,
- Sliding number of directors permitted
- Corporations allowed to engage in commercial activities if profits are reinvested in support of the organizations not-for-profit purpose. **** (Not currently supported under federal legislation)
- Other legislation e.g. Income Tax Act and CRA trumps this act.



Public Benefit Corporation

- Charities and not-for-profit corporations receiving \$10,000 from a third party are “Public Benefit Corporations” (federally called soliciting corporations)
- Charities are always and permanently Public Benefit organizations – minimum of three directors, and have a higher threshold of accountability and non-distribution constraint.
- Non-charities receiving a total of \$10,000 (from third party) become temporary Public Benefit Corporations for the next three years. (yo-yo corporations)
- The three years begins at the annual meeting after the grant.



New Provisions for Directors

- Act provides for paying directors, and allowing up to one third of directors to be employees. *** (prohibited for CRA charities)
- Strengthened conflict of interest guidelines.
- Can purchase liability insurance and indemnify directors.
- If Directors resign then senior staff acts in their stead. (implications yet to be fully understood.)



ONCA Member Rights

Adopted from Shareholder Rights

- Shareholders have financial interest in corporation, 99.9% of nonprofit members do not.
- Business corporations serve their shareholders above all. In public Benefit corporations members are but one stakeholder. Other key stakeholders are the public and Funders. Under ONCA members have all the rights.
- Many nonprofits use membership as a method of affiliation
 - Sport has 3 million children as non-voting members
 - A philanthropic organization has thousands of donors as members
 - Religious groups have their congregations as members



Member Rights

- Each classes of members has a vote on important corporate issues (mergers, sale of assets etc.) including non-voting members who are treated like minority shareholders.
- Each class of member (e.g. youth, corporate,) needs to approve. – creates pressure to minimize the classes of members
- Obtaining a quorum at an annual meeting is no longer acceptable. Proxies or electronic voting is mandatory under the ONCA
- Members can give a proxy to “any person” not just another member.



Members Rights Continued..

- All members can receive articles of incorporation and by-laws free of charge.
- Members have increased rights to view financial records.
- Classes of members have to be in Articles (letters Patent). (They are now in by-laws.)
- Changes to articles have to be reapproved by CRA who may review all articles *** amending articles is risky with CRA. Also reviewed with the Attorney General. ***(**Caution – changes still underway**)



More Members Rights

- Members can put forward proposals for discussion on any subject relevant to the organization – at the annual meeting or special meeting (10%) of members.
- If approved by the membership, the proposal is binding on the Board of Directors. (in other corporate legislation member resolutions are only advisory)
- Members can take the Directors to court if they believe they are not acting in compliance with the act, regulations, articles and by-laws.



The Clash of Cultures over Conflict Management

- Over the years Nonprofit Boards have evolved methods for resolving conflict that do not involve winner take all - majority votes. – other forums for contentious issues, collaboration, stewardship.
- Eventually the Courts will decide - Traditionally Directors have decision-making authority but this act clearly gives members the right to bring binding resolutions. How they will decide is very unclear. In the interim there will be significant conflict and unnecessary restructuring.
- Difficult decisions loom re quorum for meetings, classes of members, criteria for membership



ONN Amendments

ONN is asking that Nonprofit traditions and ways of working be respected:

- Restrict member voting to member business. Make member resolutions nonbinding.
- Make nonvoting members non-voting.
- Eliminate mandatory proxy or electronic voting.



Other Amendments Requested

- Provide an Opt-in option to a clear definition of Public Benefit corporation for nonprofits providing public benefit that are not charities.
- Provide a permanent non-distribution constraint for nonprofit organizations opting to be public benefit corporations.
- Eliminate the \$10,000 trigger. Member benefit corporations would never be public benefit corporations. (no yo-yo corporations)



What You Can Do

The MPPs do not understand the destabilizing impact this legislation is going to have on the nonprofit sector.

ONN is raising the issues but until the MPPs hear from you directly they will not take this issue seriously.

- Take this issue up with your government funders. They do not understand the impact either.
- Use the ONN site to work with others in your ridings and visit your local MPP.
- Ask to meet with Minister Best, to explain your concerns. Cc your funding Ministers and Minister Sousa.
- **Join the ONN call for a delay of proclamation.**
- **Join ONN to strengthen our reach and support our work.**



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