



## The Landscape is Changing for Charities & other Not-For-Profit Organizations

Governance of charities and other not-for-profit corporations has become a hot topic of late. Until very recently, the Saskatchewan *Non-profit Corporations Act, 1995 (SKA)* was the most modern corporate statute applicable to these types of corporations enacted in Canada. That unique distinction has changed with the passage of new corporate governance legislation at the federal level and provincially in Ontario. However, the SKA did provide a model for the drafters of these new acts since it had been around for ten years when the drafting started and little problems had been encountered with it. Another statute to keep an eye on is the legislation in British Columbia which is currently under review.

### The Canada Not-For-Profit Corporations Act

At the Federal level, the new *Canada Not-For-Profit Corporations Act (CNCA)* provides for the phased in repeal of the *Canada Corporations Act (CCA)*, and, specifically, will replace Part II of the CCA which is the part of the CCA dealing with corporations without share capital.

The provisions of the CCA which apply to corporations without share capital were first introduced in 1917 and have not been substantively revised since that time. The federal government has been working on replacing the antiquated CCA for over thirty years and the CNCA is the eighth attempt at doing so. The CNCA received Royal Assent on June 23, 2009 but it is not yet law as the regulations under the CNCA must first be finalized. Draft regulations were released on June 25, 2010. It is anticipated that the CNCA will come into force in mid 2011.

Upon coming into force, every non-profit corporation currently governed by Part II of the CCA will have three years to formally make the transition to the CNCA. In order to be governed by the CNCA, a corporation will have to apply for a certificate of continuance within the three year transition period or face dissolution. There will be no government fee for the filing of articles of continuance if they are filed within the prescribed three years. If a corporation does not complete the transition within the three year transition period, the corporation may be dissolved. If a corporation is dissolved for failure to file the transition articles, it will be eligible for revival under the CNCA subject to a prescribed fee.

In order to comply with the CNCA, each federal not-for-profit corporation will need to review its letters patent and revise them as additional information will be required to be included in them. Furthermore, the by-law requirements under the CNCA will be different than the requirements under the CCA and current government policy so each corporation will be required to conduct a by-law review and amend its by-laws accordingly. Corporations and their directors should be proactive in taking the necessary steps to comply with the new legislation.

### The Ontario Not-For-Profit Corporations Act

In Ontario, the new *Ontario Not-For-Profit Corporations Act (ONCA)* will replace the Ontario Corporations Act ("**OCA**"), and, in particular, Part III of the OCA which covers corporations without share capital.

The OCA came into existence in 1907 and the last substantial updates to it were made in 1953. The reform of Ontario's corporate legislation applicable to charities and other non-profit corporations has been under way for the past three years. The ONCA is the result of an extensive consultation process with the stakeholders in the sector to assess their needs. The ONCA received Royal Assent on October

25, 2010. A draft of the Regulations to the ONCA has not yet been released. It is expected that the ONCA will become law in late 2012.

Unlike the CNCA, Ontario non-profit corporations will not be required to file articles of continuance to convert from the OCA to the ONCA. Rather, conversions will be automatic and corporations will have the option of amending their letters patent and by-laws so that they conform to the ONCA by filing articles of amendment. Those corporations that choose not to file articles of amendment will be deemed to have amended their letters patent and by-laws on the third anniversary date of the coming into force of the ONCA so that they conform to the ONCA.

The OCA also applies to share capital corporations which have objects of a social nature such as golf clubs. These corporations will have five years to continue under the Business Corporations Act (Ontario) or to convert to non-profit corporations under the ONCA or as co-operative corporations.

### **The British Columbia Society Act**

The British Columbia Society Act ("**BCSA**") is also under review as part of the Ministry of Finance's continuing

refinement of British Columbia business statutes (namely, those in the corporate, commercial, real estate and financial services sectors).

The Ministry sought stakeholder input (the deadline was April 1, 2010) in order to deal with "problems, gaps, inconsistencies or ambiguities" in the BCSA. Initially, two topics have emerged, whether a sophisticated business law framework is the most appropriate model for not-for-profit corporations and whether the BCSA should contain rules that limit the operations of these types of corporations. It is anticipated that this call for input by the British Columbia government will be the first phase in the consultation process.

### **Atlantic Provinces**

Now that there will be new not-for-profit legislation at the federal level and in Ontario, there will be only two provinces left in Canada (New Brunswick and Prince Edward Island) which still follow a letters patent regime. The applicable provincial ministry has the discretion to reject applications for letters patent since it is a discretionary process. On the other hand, articles of incorporation are issued automatically if the application is filled out correctly. It is yet to be seen whether these two provinces will follow suit.

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