



January 2021

Meeting Updates for Not-for-Profit Corporations

By Linda J. Godel and Lauren Crosby

Since March of 2020, not-for-profit corporations ("**NFP**") have faced challenges in holding their annual general meetings ("**AGM**"), special members' meetings, and directors' meetings as a result of the restrictions on in-person gatherings due to COVID-19.

The Ontario and Federal governments have responded in different ways to assist NFPs with holding these meetings. Given that these restrictions are continuing into 2021, this article provides a refresher on the government's responses, as well as an update on the relief measures available.

Ontario Not-For-Profit Corporations

As noted in our April 2020 and October 2020 articles, the provincial government made temporary legislative amendments which allowed some Ontario NFPs to defer AGMs, and to hold virtual directors' and members' meetings. The ability to continue to hold virtual meetings was extended by regulation until May 31, 2021, with the possibility of extending again if necessary.

The Ontario government is now seeking input by February 8, 2021 on whether further temporary or permanent legislative amendments should be made in order to enable Ontario NFPs to carry out their operations and activities in a more virtual/digital manner. The three areas of interest to the government are: (1) virtual meetings; (2) electronic delivery of notices and documents; and (3) storage/examination of records through electronic means.

Federal Not-For-Profit Corporations

In our August 2020 article, we reported on the Order ("**Order**") issued by the federal government which extended the deadline for NFPs governed by the *Canada Not-for-profit Corporations Act* ("**CNCA**") to call an AGM, present annual financial statements to their members, and where applicable, file copies of their annual financial statements with the federal corporate ministry, Corporations Canada.

The Order applied retroactively from March 13, 2020 to December 31, 2020. Effective January 1, 2021, the Order no longer applies and, as a result, federal NFPs need to adhere to the regular deadlines for these matters under their governing documents.

For more information on the requirements for meetings of federal NFPs generally, see our article [here](#).

Since holding in-person AGMs would conflict with physical-distancing and self-isolation requirements, Corporations Canada has reminded federal NFPs of the options available to them to remain compliant with the CNCA, as summarized briefly below. These options apply to special members' meetings as well.

1. **Virtual Meetings**

One option is to hold an AGM virtually, in whole or in part, subject to an NFP's by-laws. A federal NFP may be able to hold its AGM fully virtually, meaning that everyone who attends will do so electronically, but this option is only viable if the NFP's by-laws specifically allow it. Otherwise, the NFP may be able to hold its AGM partially virtually, meaning that most people who attend would do so electronically with one or more people attending in-person. Again, an NFP will need to check its by-laws to determine any restrictions. If a federal NFP holds its AGM virtually, in whole or in part, electronic voting by members is permitted as long as its by-laws do not prohibit it. All votes cast electronically must be gathered in a way that allows them to be verified, tallied and presented while maintaining voter anonymity. If a federal NFP's by-laws do not expressly allow AGMs to be held entirely virtually, or, if they explicitly prohibit them being held electronically (in whole or in part), the directors may be able to amend the by-laws with immediate effect so that an AGM can be held electronically. In this case, the amendment would need to be approved at the next meeting of members to remain effective. Before pursuing this course of action, federal NFPs should carefully review their by-laws to ensure that member approval is not required to bring amendments to the by-laws into effect, in which case, this option would not be available.

2. **Written Resolutions in Place of AGM**

For federal NFPs with a small number of members, business items that are typically dealt with at an AGM (namely, election of directors, presentation of financial statements, and appointment, or waiver of appointment, of an auditor or public accountant) may be dealt with instead by written resolution signed by 100% of the members. A written resolution can be signed in counterpart, meaning each member can sign a separate copy of the resolution, and it can also be signed and delivered electronically. All of the copies can then be compiled into one document. The written resolution would take the place of the AGM, and the fully signed copy should be filed in the corporation's minute book.

3. **Postpone the AGM** If the calling of an AGM within the required timeframe would be detrimental, a federal NFP can apply to Corporations Canada for an extension. A request for an extension must be submitted at least 30 business days before the date that the notice calling the AGM is required to be sent to the members of the corporation.

We will continue to monitor the regulatory environment in which Ontario and Federal NFPs operate and provide updates on important developments.

We would be happy to answer any questions that you may have about the regulatory developments described in this article, or any other matters involving Ontario or federal charities and other NFPs in relation to COVID-19 or otherwise.

Authors



Linda J. Godel
Partner

Tel: 416 643 8809
lgodel@torkinmanes.com



Lauren Crosby
Associate

Tel: 416 777 5429
lcrosby@torkinmanes.com

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.