



December 2021

Updates for Ontario and Federal Not-for-Profits and Charities

By Linda J. Godel and Alexandra Zavalunov

This fall, the Ontario government made several legislative and regulatory changes that directly impact Ontario charities and not-for-profit corporations (**NFPs**). As we noted in our recent article, the Ontario *Not-for-Profit Corporations Act, 2010* (**ONCA**) was proclaimed into force on October 19, 2021. The proclamation of the ONCA has resulted in changes to the way that the Ontario Public Guardian and Trustee (**PGT**), the protector of charitable interests in the province, is involved with corporate applications of charities under the ONCA. In addition, the Ontario government has further extended the temporary period for Ontario NFPs to hold virtual members' and directors' meetings. The effect these changes will have on Ontario charities and NFPs is outlined below.

At the federal level, on November 23, 2021, the Minister of Innovation, Science and Industry (**Minister**) laid before Parliament his report as part of the statutory review of the *Canada Not-for-profit Corporations Act* (**CNCA**). Details of the Minister's report and points of interest are discussed below.

The PGT and the ONCA

Now that the ONCA has been proclaimed into force, the PGT's involvement with corporate applications by charities governed by the ONCA will be more limited. The PGT will only be involved in these applications in the following circumstances:

1. If the word "Charity" is used in the corporate name;
2. If the word "Foundation" is used in the corporate name to suggest the applicant is a charity;
3. If the PGT has requested notification of any changes with respect to the applicant; and
4. If the applicant is a charity under the ONCA that wishes to change its purposes but does not want to include a clause in its articles requiring property acquired before the updating of its charitable purposes to be applied only to the old purposes (**after-acquired clause**).

The after-acquired clause will automatically be included in the application of any charity that applies for a change to its purposes unless the charity obtains the PGT's permission for the clause to be excluded.

Extended Relief for Members' and Directors' Electronic Meetings

As noted in our April 2020, October 2020 and January 2021 articles, the Ontario government has passed various temporary legislative amendments that allowed, for limited time periods, Ontario NFPs to hold virtual directors' and members' meetings, even if their governing documents provided otherwise. This temporary period has once again been extended by regulation until September 30, 2022. The extension applies only to the ability of NFPs to hold virtual meetings, but does not extend the required timelines for holding members' annual meetings.

Minister's Report on the CNCA

In June 2021, the Minister launched an online public consultation for feedback on the implementation, impact and function of the CNCA. The goal of the consultation was to ascertain whether the CNCA's objectives continue to be met and whether the CNCA remains sufficiently flexible to accommodate all types of federal NFPs. The consultation explored many aspects of the CNCA, as well as whether recent developments in legislation pertaining to business corporations should be considered in relation to not-for-profit corporations. The Minister's report summarized the findings of the consultation and touched on some of the following topics:

- Audit and reporting obligations;
- Soliciting/non-soliciting distinction and the applicable rules;
- Ex officio director appointments;
- Classes of membership and rights of non-voting members;
- Diversity disclosures; and
- Elaborating on fiduciary duty.

The Minister's report included a comprehensive summary of the various viewpoints and concerns raised by those who commented on the consultation, but did not provide any commentary in response. As a next step, the Minister's report will be reviewed by a Parliamentary committee, which is expected to issue its report within the next year.

We will continue to monitor new developments, updates and reports in relation to regulatory changes that may impact the function of and/or services available to Ontario and federal charities and NFPs.

We would be happy to answer any questions that you may have about any of the above-noted regulatory developments, or any other matters involving Ontario or federal charities and NFPs.

Authors



Linda J. Godel
Partner

Tel: 416 643 8809
lgodel@torkinmanes.com



Alexandra Zavalunov
Associate

Tel: 437 253 2741
azavalunov@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.