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Updates of Interest to Ontario Not-for-Profits and Canadian Registered Charities

By Linda J. Godel and Lauren Crosby

In the past few weeks, there have been several regulatory developments that impact Ontario not-for-profit corporations (**NFPs**) and Canadian registered charities.

With respect to Ontario NFPs, the provincial Government recently announced that the temporary legislative amendments made earlier this year to allow Ontario NFPs to hold virtual meetings would be extended. In addition, on September 21, 2020, a motion was passed to extend the deadline to proclaim Ontario's *Not-for-Profit Corporations Act* (**ONCA**) into force in response to continued delays (**Motion**).

With respect to Canadian charities, in September, the Charities Directorate of the Canada Revenue Agency (**Charities Directorate**) released another update about the impact of COVID-19 on its services and activities (**September Statement**).

Details of these developments are outlined below.

Virtual Meetings of Ontario NFPs

This past spring, the provincial government made regulatory amendments that, among other things, allowed Ontario NFPs to hold members' and directors' meetings virtually, regardless as to what their letters patent or by-laws permitted in this regard. (See our April article for more information.)

On October 1, 2020 the Ontario Government announced that these amendments would be extended to allow Ontario NFPs to continue to hold their meetings virtually until May 31, 2021 even if their governance documents restrict or do not permit them to do so.

Update on the ONCA

As we wrote about in our January article, at the beginning of this year, the Ontario Ministry of Government and Consumer Services (**Ministry**) indicated that the proclamation date of the ONCA would not be in early 2020, as was previously anticipated.

Since the ONCA was passed in 2010, it will be automatically repealed if it does not come into force by December 31, 2020. As a result, many in the sector have been watching closely for updates from the Ministry on the status of the ONCA.

The Motion extended the deadline for the ONCA to come into force until December 31, 2021, with the exception of a few provisions which had proved to be controversial. In particular, the Motion does not grant this extension for provisions in the ONCA that relate to membership class voting and the rights of non-voting members. Specifically, the proposed class voting provisions would enable each class of members to vote separately on certain issues which would in effect give each class a veto over the vote. In addition, the non-voting member provisions would mean that members without voting rights would have a vote on certain issues. Since these provisions were excluded from the Motion, they will be automatically repealed on December 31, 2020 if the ONCA is not proclaimed before that date, which is not expected.

Updates for Registered Charities

Over the past several months, the Charities Directorate has released regular updates about the impact that the pandemic has had on its services and activities. Most recently, the Charities Directorate announced that it was gradually resuming compliance activities, including involuntary revocations and audit activities.

See our articles COVID-19: Update From the Charities Directorate of the Canada Revenue Agency (CRA), COVID-19: Announcement from Federal Government for Community-Based Organizations and Updates from Charities Regulators, and COVID-19: More News for Charities and Not-For-Profit Corporations for further information on earlier updates.

The September Statement provides an overview of the additional services and activities that the Charities Directorate is providing. The key takeaways are as follows:

1. **Involuntary Revocations:** The Charities Directorate will resume the revocation of the charitable registration of charities that failed to meet their filing and reporting obligations. Importantly, the September Statement indicates that involuntary revocations would be limited to reporting periods prior to the pandemic.
2. **Audits:** The Charities Directorate will be resuming audits that were previously suspended due to the pandemic, and it will also be commencing new audits of registered charities.
3. **Charity applications:** The Charities Directorate has begun to ramp up its review of applications for registration, however, COVID-19 pandemic precautions continue to impact its ability to meet its service standards in regards to paper-based applications. Online applications will presumably be processed more quickly and are therefore recommended.

We would be happy to answer any questions that you may have about any of the above-noted regulatory developments during the pandemic, or any other matters involving COVID-19.

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