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Does Being an Ontario Not-For-Profit Corporation Mandate Audited Financial Statements?

Given that many (although certainly not all) not-for-profit corporations (“NFPs”), both charitable and non-charitable, have a December year end and are preparing for their year end financial reporting, we thought it timely to provide a reminder about the financial disclosure requirements contained in their governing corporate legislation.

Ontario NFPs are currently governed by the *Ontario Corporations Act* (the “OCA”). The OCA does not provide much flexibility regarding the appointment of an auditor or the financial disclosure required by Ontario NFPs. Specifically, the OCA includes the following requirements:

accountants/auditors for further information regarding the accounting standards applicable to them.

Is an Ontario NFP Required to Have Audited Financial Statements and Appoint an Auditor?

Yes, but an NFP can be exempt from the appointment and duties of an auditor under the OCA for a fiscal year IF:

- the NFP’s annual income is less than \$100,000; AND
- 100% of the NFP’s members consent, in writing, to the exemption for the specific year.

NFPs should speak with their

Are there any Restrictions on Who may be Appointed as the Auditor?

The auditor of an NFP may not be:

- a director, officer or employee of the NFP; or
- a director, officer or employee of an affiliated corporation of the NFP; or
- a partner, employer or employee of a director, officer or employee of the NFP.

How, When and for How Long is an Auditor Appointed?

An auditor must be appointed by the members of an NFP at their first meeting following incorporation and at each subsequent annual members’

meeting. An auditor holds office until the NFP's next annual members' meeting.

What if the Members don't Appoint an Auditor?

If the members don't appoint an auditor at their first meeting, the directors of the NFP are required to do so. If the members don't appoint an auditor at a subsequent annual meeting, the auditor previously appointed remains in office until another auditor is appointed in the first auditor's place. If an auditor resigns, the directors can appoint a replacement.

What Notices must be given to an NFP's Auditor?

The auditor of an NFP must be given written notice of the auditor's appointment and all notices and other communications relating to members' meetings that the members are entitled to receive.

How is the Remuneration of an NFP's Auditor Set?

The remuneration of an NFP's auditor appointed by the members is set by the members unless they authorize the directors to do so. The remuneration of an auditor appointed by the directors is set by the directors.

Do the Members of an NFP Approve the NFP's Financial Statements?

No, the members of an NFP do not approve its financial statements. However, at each annual members' meeting, the directors must present the financial statements with the auditor's report to the members.

The annual members' meeting at which the financial statements for the year end will be presented must be held not more than six months after the year end to which the statements pertain.

Are there any Restrictions on the Fiscal Year End of an NFP?

The first financial statements for an NFP must cover the period beginning on the date of its incorporation and ending on its selected fiscal year end. Under the *Income Tax Act* (Canada), a fiscal period cannot be longer than 53 weeks.

Subsequent financial statements of an NFP must cover the period beginning on the first day following the end date of the preceding statements.

Can an NFP Change its Fiscal Year End?

Yes, but only with the consent of the Canada Revenue Agency and subject to any approval requirements contained in the NFP's incorporation documents and by-laws.