



Not-for-profit law in Canada: What to expect in 2014

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Given the increasingly important role that the not-for-profit and charitable sector plays in Canada's social and economic fabric, it is not surprising that lawmakers have paid particular attention to this sector in recent years with more changes to the legislative and regulatory framework governing not-for-profit corporations ("NFPs") expected in 2014. This bulletin provides such organizations with an overview of what to expect next year and how to be prepared.

The Clock is Ticking for CNCA Compliance

NFPs incorporated under Part II of the federal *Canada Corporations Act* are now on the clock as the transition period to the new *Canada Not-for-Profit Corporations Act* (the "CNCA") officially ends on October 17, 2014. As a result of the many significant changes brought about by the CNCA, which provides NFPs with more modern governance tools and gives enhanced rights to NFP members, federal NFPs will likely need to make a number of changes to their governing documents. In order to continue under the new regime, a federal NFP should:

- Review its current governing documents to determine amendments required to comply with the CNCA and any other amendments that it may wish to make;
- Prepare Articles of Continuance and new by-laws that conform with the CNCA (note: new by-laws must also be registered with Industry Canada within 12 months of filing the Articles of Continuance);
- Obtain director and member approval, as applicable, of the Articles of Continuance and by-laws;
- If the federal NFP is also a registered charity, it may need to also obtain CRA approval of its new documents (depending on the changes being implemented in connection with the continuance); and
- Draft and file the new Articles of Continuance by October 17, 2014.

Given the potential for complexity or delays in any CNCA transition, we recommend retaining legal counsel as soon as possible for assistance. Members of the firm's Charities and Not-for-Profit Practice Group have extensive experience in this area.

The ONCA Remains in a Holding Pattern

Following implementation of the CNCA, Ontario passed its own *Not-for-profit Corporations Act* ("ONCA"), which institutes a similar framework to the CNCA by modernizing the governance of provincially-registered NFPs to give them similar rights and obligations as for-profit corporations. However, unlike the federal statute, Ontario has yet to proclaim the ONCA in force. Rather, the provincial government has introduced Bill 85 to amend other legislation consequential to the enactment of the ONCA and provide additional regulatory detail. Bill 85 contemplates proclamation for the ONCA within six months of its passage and then a three-year transition period to the new framework. Yet despite tacit support for the bill at first reading in June, the minority governing Liberals have not yet re-introduced the Bill for second or third reading

and this may be unlikely to happen before the 2014 provincial budget and election that could soon follow it. Therefore, it remains unclear when the ONCA will be proclaimed even though the legislation was passed in 2010 and the regulatory framework remains somewhat clear.

Despite the delays in proclamation, the ONCA is still a very important act for NFPs to consider. For example, any NFPs contemplating incorporation in Ontario or revisions to articles or bylaws for existing NFPs in Ontario would be well-served to work with their legal counsel to ensure such constating documents are made as compliant with the ONCA as possible. This will save time and cost in the future when the ONCA is finally proclaimed. Ontario-incorporated NFPs may also wish to consider making any changes to their membership (i.e. voting rights) before the ONCA is proclaimed, as doing so after will require a more fulsome membership vote rather than the current right to simply file amended articles or bylaws.

In addition, federal NFPs may wish to consider continuing under the old Ontario *Corporations Act* (the precursor to the ONCA) with ONCA-compliant articles if there is a particular CNCA provision it is resistant to, which is not part of the proposed Ontario framework, such as the permissibility of ex-officio directors in Ontario that are strictly prohibited under the CNCA.

Legislative Developments in British Columbia?

The British Columbia (B.C.) provincial government has been engaged in a review of the B.C. *Society Act* since 2009 in order to identify possible directions for the reform of not-for-profit legislation in B.C. Most recently, feedback on a discussion paper which addressed the governance of B.C. societies was sought earlier this year with legislation to amend or replace the *Society Act* targeted for 2014 at the earliest.

Ongoing Rules and Guidance from the CRA

In addition to changes in the governance frameworks established by legislation, we also expect to see more rules and guidance on the operation of not-for-profit organizations, whether from *Income Tax Act* amendments or changes in CRA policy. In the 2013 federal budget, the Canadian government introduced the so-called “First Time Donor’s Super Credit” to encourage charitable donations whereby, until 2017, a donor that had not given a donation in the past five years is entitled to an one-time additional tax credit (subject to certain limits). Since NFP lobbying groups are hoping to build on this credit to introduce a “stretch credit” in the 2014 federal budget, keep an eye on this space for important updates.

There may also be additional commentary on the involvement of ‘ineligible individuals’ with charities and on the ability of registered charities (including private foundations) to carry on business activities. In addition, the CRA may provide further guidance on the tax implications of crowd-funding for NFPs as this is becoming a popular and effective fundraising strategy and has already caught the attention of the CRA and other regulators in the for-profit sector. See here for more on a recent crowd-funding decision by the Ontario Securities Commission and look for more analysis from the CRA in this area in the near future.

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