

The Impact on the Sector of the Ontario Not-for-Profit Corporations Act if Proclamation Proceeds Without Amendments to the Legislation

1. *The legislation as currently drafted creates serious governance problems in the sector.*

- Membership rights in the ONCA are modeled on, and go even further than the rights of shareholders under the Business Corporations Act. Since the role and interest of members in the not-for-profit sector are fundamentally different from shareholders, the greatly expanded membership rights create governance difficulties in a sector focused on the public good.
- The uncertainty and complexity around the Board of Directors ability to govern and the increase in conflictual situations between members and directors will discourage voluntary directors from serving on boards.

2. *Implementing the legislation will do serious harm to the operation of not-for-profit organizations and to the communities they serve.*

- The legislation as written will cost the not-for-profit sector countless dollars in legal fees, and endless hours of staff and volunteer time engaged in unproductive, indeed counterproductive, actions to minimize the risks this legislation poses.
- The extraordinary membership powers granted (binding members resolutions), will lead to an increase in proposals from members. The mandatory proxies or electronic voting on these proposals in a sector where each individual has one vote will divert significant organizational time to manage and engage in the voting processes. This has the potential for major diversion of organizational resources from their mission. We are aware that organizations have already begun, and anticipate that organizations that can, will narrow and limit membership – precisely the reverse of what is intended and how the sector views membership.
- Legal counsel is advising extensive and costly litigation will be needed to clarify the legislation. Those organizations involved in the litigation will likely suffer irreparable harm as members are pitted against each other and against their boards.

3. *For approximately 25% - 35% of Ontario not-for-profits, the role of membership is so embedded in their operations they will not be able to restructure, leaving them continuously vulnerable to ongoing vexatious actions.*

- The extensive new rights for members leaves organizations open to disruption by a small faction of membership, which can tie the organization up with multiple meetings and unwanted and unnecessary motions. It leaves organizations at risk from radical and single-issue factions in their memberships or congregations.
- Non-voting membership reflects a long tradition of affiliation in the sector. Under the ONCA they acquire voting rights akin to those of minority shareholders when in fact their interest in the not-for-profit organization is quite different.

4. *There is no implementation plan to assist not-for-profit sector organizations make the complex transitions to this new legislation.*

- The materials developed to assist with the transition by Consumer Services may be of assistance to the legal community, but they provide insufficient information and guidance for individual organizations in the not-for-profit sector.
- Moreover the guides, regulations, and draft by-law will not be ready until the fall of 2012.
- There is no sector wide distribution or education plan.
- No funding has been allocated to help the sector make this costly, complex and unnecessary transition.

Examples from the Field

An organization providing attendant care for people with physical disabilities has its clients as members. These members have a very high interest in the detail of the program operations, and its staff. Today these concerns are dealt with in a regular resident's forum with the organization's management. In their role as members, the clients elect a Board of Directors, approve financial statements, etc., but service concerns are dealt with between management and residents. Under the ONCA, the program concerns currently dealt with in residents forums are likely to move into the governance arena through member proposals that will be binding on Boards of Directors. It can be expected that human resource management with all the attendant costs will be the subject of some proposals, as will operational issues such as having attendants provide care later at night, earlier in the morning, more frequently etc. Members are not responsible for financial management so may not appreciate the impact of their resolutions, or, their priorities may be different from those of the Directors and the program funders. Both the organization's volunteer directors and governments who fund the care for residents will find themselves in impossible positions.

A philanthropic organization (fundraising organization) has donors as members - thousands of them. Most of these members are inactive but proud to be listed as a member. Under the ONCA, the mandatory proxy or electronic voting will require the philanthropic organization to mobilize their vast inactive membership routinely. They have a dilemma. If they set a low threshold for quorum, they may be able to elect directors but the low quorum might then leave the organization vulnerable should they have a small group of dissatisfied donors bring forward proposals. Will the proposals passed by a fraction of the membership bind the Board of Directors and alienate the majority of donors who have no interest in being active? How much energy will be required to mobilize and manage members who do not wish to be active on an ongoing basis? What are the implications for donor loyalty if the



organization decides to no longer make them members? What is the tolerance for donors to be drawn into these kinds of conflictual situations before they take their money elsewhere?

Forty-one **minor sports organizations** in a mid-size Ontario community are asking for help with how to restructure, as well as the mechanics of what restructuring means for their organizations. They are some of the 7,500 local sport organizations in Ontario looking for help. They are worried and confused about the impact of the new legislation on how they operate and the potential for sporting rules and play issues to migrate into organizational issues by way of member proposals. Sport always has many issues where parents may have differing views from the organization as a whole; for example, finding the balance between playing the best players or giving all team members playtime, or how children are allocated between teams; or contentious rule changes. These issues have always been handled outside of the governance and management structure of the organizations. As members learn they can bring proposals, which, if passed, will be binding on their local organization, they risk seriously disrupting operations and polarizing members. Most minor sport organizations have few staff and are run by volunteers. Who will assist them manage the proxy votes of hundreds of members? Where do they go for advice? How will they manage the demands this will place on volunteer directors?

In summary: The ONCA as currently structured does not support the balanced, conflict resolution and operational traditions the sector has developed over many years.