



ONTARIO NONPROFIT NETWORK

July 5, 2012

The Honourable Margaret Best
Minister of Consumer Services
6th Floor, Mowat Block
900 Bay Street
Toronto, Ontario
M7A 1L2

Dear Minister Best,

Re: Requesting a DELAY of Proclamation of Ontario Not-for-Profit Corporations Act (ONCA)

In recent months, the Ontario Nonprofit Network has been working closely and collaboratively with a large number of Ministries on important issues designed to achieve mutually beneficial results for both the not-for-profit sector and the government of Ontario in providing public benefit services and programs in communities across the province. Key initiatives have included: reforming the funding process between government and the sector; improving access to infrastructure loans for sector organizations; and ensuring surplus government lands can remain in the public domain by being purchased by not-for-profit organizations at fair market rates. This joint work (co-lead by the Ontario Nonprofit Network and the Open for Business Secretariat at the Ministry of Economic Development and Innovation) was highlighted at a recent Open for Business Roundtable chaired by Minister Duguid and endorsed by the Premier.

Given the exemplary joint partnership work noted above, we were disappointed to receive your letter in early May 2012, advising ONN that the Government will not be proceeding with key amendments to the ONCA as requested in our letter to you dated November 2011.

As we have advised your staff and colleagues, the new ONCA does not provide a corporate structure that meets the current and distinct needs of Ontario not-for-profits and charities. In particular, we are most concerned about the changes to membership provisions that are contained within the Act. It is these specific provisions that remain our priority to amend and clarify prior to the Act's proclamation.

We have repeatedly heard from many large and small not-for-profit organizations about the disruptive impact this legislation will have on how they manage their operations, their governance structures and long standing relationships. We applaud you for taking the time to meet with organizations such as the YMCA and the Sport Alliance, to discuss directly with them their concerns with the ONCA. We know there are many more organizations facing potentially equally difficult circumstances and we would be pleased to share their concerns with you. For your information, please see attached a short review of sector concerns on the ONCA and the Act's potential impacts, as well as case study scenarios.

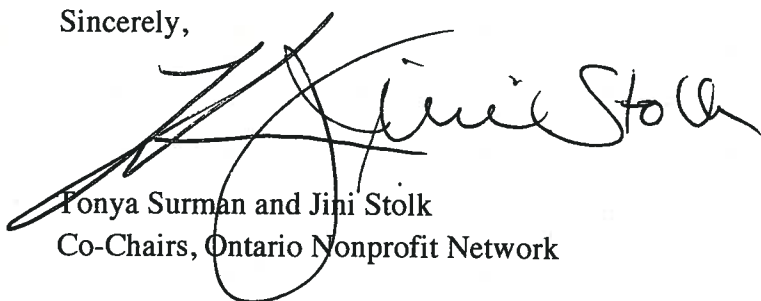


As we understand it, proclamation of the ONCA is scheduled for January 1, 2013 and it will fully come into effect January 1, 2016. This time period does not allow sufficient time nor are there existing resources to develop effective sector-oriented training materials, reach out and communicate with the thousands of not-for-profit sector organizations to assist them to understand this new and very complex legislation, nor for them to seek knowledgeable legal advice and undertake complex and potentially divisive restructuring. Moreover, sector organizations, as they begin to understand the implications of this legislation for their operations, keep asking us why this disruption is necessary when the ONCA can, with just a few amendments, be supportive of the traditions and relationships in the sector. Implementation could then proceed much more smoothly.

Minister Best, under these circumstances, we are writing to respectfully request that you delay proclamation of the ONCA to allow the not-for-profit sector and the government find solutions to the operational challenges posed by the legislation.

The Ontario Nonprofit Network is committed to working constructively with the Ontario government to ensure a healthy and resilient public benefit sector. We look forward to meeting with you at your earliest convenience to discuss solutions and will be in touch with your office to schedule a meeting.

Sincerely,



Fonya Surman and Jini Stolk
Co-Chairs, Ontario Nonprofit Network

cc: Premier Dalton McGuinty
The Honourable Charles Sousa, Minister of Citizenship & Immigration

Attached:

- **Appendix A – Summary of the Impact**
- **Appendix B – Case Studies**
- **Appendix C – Overview of the Ontario Nonprofit Network**

Appendix A

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.

Appendix B

Understanding the Impact of the New Membership Provisions in the Ontario Not-for-Profit Corporations Act on Ontario Not-for-Profits and Charities

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.



Appendix C

BACKGROUND: The Ontario Nonprofit Network (ONN) and the Not-for-Profit Sector -- Key Partners in Change

The Ontario Nonprofit Network (ONN) was organized in May 2007 in response to concerns about proposed changes to the Ontario Not-for-Profit Corporations Act (Bill 65). Since that time, sector support for the not-for-profit network has continued to grow and ONN has emerged as a nonpartisan convener of sector voices, communication broker and coordinator for not-for-profits in Ontario. We have increased collaborations with government, foundations and segments of the for-profit sector to support its mandate.

ONN's current network exceeds 6,000, with an estimated reach of 42,000 individuals who are committed to the sector in Ontario. Within the last six months alone, the network has grown by more than 50%, a strong indication of interest, credibility and commitment to ONN's work with and for the sector.

- The ONN played an important role in the development of the Government of Ontario's Partnership Project Report, released March 2011, submitting various sector-driven papers and participating in the launch of the Partnership Project Office. ONN continues to work effectively with the Ministry of Citizenship and Immigration to advance the Report's recommendations.
- ONN has also been involved in provincial education and training on the new provincial Accessibility Standards for Customer Service through funding from the Ministry of Community and Social Services.
- Recently, the ONN coordinated sector involvement in the Open for Business Process.

In addition to engaging the provincial government, the ONN works collaboratively with the sector on promoting understanding of the not-for-profit sector's role in communities, social enterprise, strengthening sector capacity, and labour force issues. Find out more about the breadth of ONN's activities on our website: www.theonn.ca/.

The Not-for-Profit Sector in Ontario

The not-for-profit sector in Ontario is an essential element in building and sustaining the province's civil society. It is a cornerstone of communities, providing important public-benefit programs and services. Organizations in the sector -- from environment, to arts and culture, sports and recreation, newcomer settlement, housing, social services, community development, education, research, faith groups and more -- affect almost all Ontarians, making our province a healthy, desirable place to live, work, and raise families.



The not-for-profit sector is solution driven, resulting in:

- Innovation and collaboration on the ground, creating transformations in service delivery
- Improved community conditions and strong community stewardship
- Retention of publicly financed assets for long-term benefit of local communities
- Economic growth and job creation

The broad not-for-profit sector in Ontario:

- Represents 7.1% of Ontario's GDP (equivalent to the auto and construction sectors' combined share of GDP)
- Includes 46, 000 registered charities and not-for-profits operating for the public benefit

The core not-for-profit sector (excluding hospitals and universities) in Ontario:

- Represents 2.6% of Ontario's GDP
- Obtains 60% of revenue through earned income (e.g. fee for service and sales) supplemented by government funding (36%), and donations and investment income (17%)
- Generates \$20 in donations and volunteer resources for every \$10 invested by government
- Supports over 600, 000 Ontarians with employment