Governance Changes on the Horizon - the New Ontario Not-for-Profit Corporations Act
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Agenda

1. The new *Ontario Not-For-Profit Corporations Act*
2. Key concepts and differences in the new Act
3. Implementation of the new Act
4. Getting ready for the new Act
The New Act

Not-for-Profit Corporations Act, 2010

• Royal Assent received October 25, 2010
• In force date has not yet been announced
  - anticipated 2012
• No regulations released at this time
The New Act (Cont’d)

• The existing *Corporations Act* was enacted in 1907 and has not been substantially updated in many many years

• The new Act is intended to modernize the legal framework

• The changes are based on business corporations statutes
The New Act (Cont’d)

- Will apply to corporations without share capital and will remove them from the governance of the existing Act
- The existing Act will continue to apply to insurers and for five years to corporations with share capital that have objects of a social nature
Key Concepts

- Incorporation as of Right
- Purpose and Capacity
- New Category of "Public Benefit Corporation"
- Director Composition and Standard of Care
- Officer Requirements
- Membership Composition and Rights
- Audit Obligations
- Dissolution
- Applicability of other Acts
Key Concepts - Incorporation as of Right

- Incorporation as of right on submission of articles, other required info and fees, rather than at the discretion of the Minister of Government Services.

- If Directors do not pass an organizational by-law within 60 days of incorporation, the corporation is deemed to have passed the standard organizational by-laws approved by the Director under the Act.
Key Concepts - Purpose and Capacity

• Must set out purpose in Articles
• Purpose may be any purpose within the legislative authority of Ontario
• Corporation has the capacity, rights, powers and privileges of a natural person
• If any purpose is commercial then it must be intended to support or advance the not-for-profit purposes
Key Concepts - Public Benefit Corporation

- Public benefit corporation subject to more stringent controls
- Charitable corporations automatically considered public benefit corporations
- Non-charitable corporation will be public benefit corporation if they receive more than $10,000 in gifts/donations or government grants/financial assistance
Key Concepts - Director Composition

• Directors not required to be members
• Minimum of 3 Directors required
• In public benefit corporation not more than 1/3 of the Directors may be employees of the Corporation (or its affiliates)
• ex-officio directors permitted
Key Concepts - Director Standard of Care

- Must act honestly and in good faith in best interests of corporation
- Exercise care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
- Reasonable due diligence defence included - may rely on certain financial info and reports of officers, employees, experts
- Corporation may indemnify
Key Concepts - Officers

- President no longer required to be a Director
- Director must be appointed as Chair of the Board
Key Concepts - Membership Composition

• Membership classes to be outlined in the Articles
• Details re: membership requirements set out in By-laws
• Director members not required
Key Concepts - Membership Rights

- Voting rights for ALL members on fundamental changes and membership issues (including those not normally entitled to vote)
- Separate class votes may be required
- Members entitled to vote may submit a proposal of matter to raise at a meeting (there are certain exceptions to guard against abuse)
- Business law concepts of oppression and dissent rights
- Articles/by-laws may provide for Directors/Members to discipline or terminate a member
Key Concepts - Audit Obligations

• For a public benefit corporation:
  - If annual revenue is equal to or less than $100,000 may dispense with audit and review engagement
  - If annual revenue greater than $100,000 but less than $500,000 may use review engagement
  - If annual revenue greater than $500,000 then audit required
Key Concepts - Dissolution

- Comprehensive regime related to liquidation, winding-up and dissolution
- Certain liabilities may continue post dissolution
Key Concepts - Applicability of Other Acts

- If there is a conflict between the new Act and another act or regulation, the OTHER act, regulation or law prevails
- *Public Hospitals Act* will prevail
Implementation

• An effective date in the future will be set for when the new Act comes into force
• New Act includes transitional provisions - 3 years from the in force date will be deemed to comply
Getting Ready

• Ensure the Corporation remains informed about the new Act
• Board to begin considering the impact of the new Act on the organization's governance model and practices
Getting Ready (Cont’d)

• Initial questions to ask:
  - Is the organization federally or provincially incorporated?
  - Is the organization a public benefit corporation?
  - Does the organization have multiple classes of members?
  - Does the organization have non-voting members?
  - What are views on retaining director members?
  - Consider any amendments to objects
  - Will audit/review engagement be required?
• On coming into force will want to amend/restate letters patent and by-laws

• May want to consider certain changes (e.g. membership) before the new Act comes into force
Getting Ready (Cont’d)

• We will provide updates on status and continue to hold education sessions on the new Act

• We are available for organization specific consultations on strategic review and planning
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