



SUBMISSION TO THE MINISTER OF GOVERNMENT SERVICES
(MGS) ONTARIO
ON THE MODERNIZATION OF THE
LEGAL FRAMEWORK GOVERNING ONTARIO NOT-FOR-
PROFIT CORPORATIONS
BY
THE NATIONAL SECTOR TASK FORCE ON NOT-FOR-PROFIT
CORPORATIONS LAW REFORM

SUBMISSION II
RESPONSE TO CONSULTATION PAPER 2

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EXECUTIVE SUMMARY

The *Ontario Corporations Act* is substantially out-of-date. First enacted in 1907 as the *Ontario Companies Act*, the Act was an early effort to create framework legislation governing corporations in Ontario. Updated in 1953 under its current name, the *Ontario Corporations Act* (“the OCA” or simply “the Act”), the scope of the Act has been reduced over the past half-century as a variety of new Acts dealing with specific types of corporations were “carved out” of the OCA. One example is the creation of stand-alone business corporation legislation in 1971, the *Ontario Business Corporations Act* (“OBCA”). As business and other types of corporations were modernized through new statutes, the OCA came to largely govern not-for-profit corporations. While other corporate statutes were further updated and modernized, including the OBCA in 2007, the OCA was not. The OCA can no longer be considered effective framework legislation for Ontario’s nonprofit corporations.

The OCA provides the statutory framework governing the creation, governance and dissolution of not-for-profit corporations, including charitable corporations, in Ontario. The Act prescribes a corporate structure and organizational model designed to enable these corporations to achieve their distinct purposes in accordance with some basic enabling provisions in the Act, under the supervision of the Board of Directors of the corporation within a largely self-regulating regime.

Recognizing the need for a wholesale review and modernization of the OCA, the Ontario Government announced a Business Law Modernization Project in 2005. The Project has three phases, of which the modernization of the framework legislation governing Ontario’s not-for-profit corporations is Phase III. This Submission brings forward twenty-seven recommendations in response to the seven issues raised in the Government’s second of three Consultation Papers.

The Task Force wishes to thank the Government of Ontario for moving forward with this important reform initiative, adopting open and transparent processes, providing instructive and accessible Consultation Papers and information sessions, and inviting the Task Force and other organizations to bring forward their views. No doubt, the new Act will benefit from these effective processes for carrying out this modernization exercise.

SUMMARY OF RECOMMENDATIONS FOR REFORM

ISSUE 1 - BOARD COMPOSITION

1.1 Number of Directors

Recommendation 1: Assuming that the new Act is an organizational statute, there is no need for the Act to be prescriptive about the number of directors, beyond one. The new Act should provide for at least one director so that the board can function on incorporation. Therefore the Task Force recommends that the new Act should fix the minimum number of directors at one, consistent with the OBCA. If a classification of not-for-profit corporations is adopted, there is no reason for the minimum number of directors to change from class to class.

Recommendation 2: The Task Force recommends that the new Act should not require outside directors. Outside directors are not required by business corporations and should not be required by not-for-profit corporations. Furthermore, efforts to require the appointment of outside directors can lead to unnecessary directors simply to meet regulatory requirements and for no valid corporate reason.

Recommendation 3: The Task Force recommends that the new Act should, as noted above, require one director on incorporation, but no other particulars in respect of a minimum and maximum number of directors. The corporation should be able to specify its preferences in its own incorporation document.

1.2 Qualifications of Directors

Recommendation 4: The Task Force recommends that the new Act should not impose requirements that some of the directors are members of the corporation. Again, the needs of different corporations vary and it should be open to the Board of the corporation to determine the role of membership in board governance. This should not be prescribed by statute.

Recommendation 5: The Task Force recommends that the new Act should prescribe the same qualifications of directors as those under the OBCA, which include some basic pre-requisites such as being of adult age and not being a bankrupt. However, residency is not presently included under the OCA and should not be included under the new Act. It is not an appropriate statutory criterion for these types of organizations and, in any event, tends to set up technical requirements that can be easily avoided through extraneous appointments.

ISSUE 2 - TERM OF OFFICE

Recommendation 6: The Task Force recommends that the new Act should include a maximum term of office for directors of three years, as in the case under the OBCA. While Directors may stay on for an unlimited number of terms, as recommended below, with the support of their boards, the length of each term should be fixed to enable the Board to vote from time to time on a director's continued role on the Board. Three years is a reasonable democratic timetable and is consistent with the prescribed term for directors of business corporations under the OBCA.

Recommendation 7: The Task Force recommends that the new Act should not include a limit on directors' terms of office. Not-for-profit corporations may benefit from long-standing volunteer directors and may choose to limit the number of terms in their by-laws, but there should not be a statutory restriction.

ISSUE 3 - DIRECTORS' MEETINGS

3.1 Notice of Meetings

Recommendation 8: The Task Force recommends that, where the time and place of an adjourned meeting is announced at the original meeting, notice of the adjourned meeting should not be required. No other rules should be included in the Act regarding notice of directors' meetings.

Recommendation 9: The Task Force recommends that the new Act should include notice provisions that are identical to those in the OBCA. The Task Force agrees with the OBA that the new Act should allow for oral notice in appropriate circumstances, and for notice by way of publication in a newspaper or posting on a website, which will necessitate an exception to the *Electronic Commerce Act*, 2000.

3.2 Resolution in Lieu of Meeting

Recommendation 10: The Task Force recommends that resolutions in lieu of meetings should be permitted in the reformed Act, as they are both presently and under the OBCA. Questions arise about the extent to which approval standards should be higher when an issue is dealt with by resolution rather than by meeting, given that the usual discussions associated with meetings may not have occurred. On balance, the Task Force recommends that this should be an issue that corporations may choose to address in their by-laws but should not be prescribed by statute.

ISSUE 4 - RESIGNATION, REMOVAL AND VACANCIES

Recommendation 11: The Task Force recommends that the new Act should include identical provisions to the OBCA regarding the resignation of directors. There is no need to distinguish between directors of business and not-for-profit corporations on the laws governing resignation.

Recommendation 12: The Task Force recommends that the new Act should allow for the removal of directors by ordinary resolution, i.e. by a simple majority of votes cast, consistent with the OBCA and other corporate organizational statutes. Again, as part of an organizational statute, such provisions become default rules on incorporation which may be supplemented in the corporation's by-laws should it choose to do so.

Recommendation 13: Per its Recommendations 11, the Task Force recommends that the new Act should include identical provisions to the OBCA regarding the resignation of directors.

Recommendation 14: The Task Force recommends that the new Act should include rights of directors on a removal or resignation that are the same as those in the OBCA, which provisions the Task Force finds equally appropriate for not-for-profit corporations.

ISSUE 5 - OFFICERS

Recommendation 15: The Task Force recommends that the new Act should not provide for the appointment of specific officers. Rather, not-for-profit corporations should be able to determine their own requirements for officers and amend those provisions as their need change from time to time. While some have suggested that there should be a default provision providing for a President, different organizations may prefer to have a Chair, a President, an Executive Director or some combination of these officer roles.

Recommendation 16: The Task Force recommends that the new Act should not require any of the officers to be directors.

Recommendation 17: The Task Force recommends that the new Act should not prescribe the number or titles of officers. Rather, not-for-profit corporations should be able to determine their own requirements for officers and to amend them as their needs change from time to time.

ISSUE 6 - DIRECTORS' AND OFFICERS' LIABILITY

6.1 Duty of Care and Loyalty

Recommendation 18: The Task Force recommends that the new Act should adopt an objective standard for the duty of care and loyalty, consistent with the provisions in the OBCA, and not the modified subjective test recommended by the Panel on Accountability and Governance in the Voluntary Sector.

6.2 Due Diligence Defense

Recommendation 19: The Task Force recommends that the new Act should incorporate a due diligence defence, consistent with the provisions in the OBCA.

Recommendation 20: The Task Force recommends that directors and officers of not-for-profit corporations should be able to plead a good faith reliance defence as part of the diligence defence, consistent with the provisions for directors and officers of business corporations under the OBCA. However, the Task Force agrees with the OBA that directors should be entitled to plead reliance on oral as well as written reports. The question arises whether protections in addition to the good faith reliance defence are appropriate for directors of not-for-profit corporations. The Task Force recommends that consideration is required of the heightened liability affecting directors of not-for-profit corporations,

particularly given the recent extension of the doctrine of vicarious liability of these organizations to the wrongful acts of not only their employees but their volunteers. The Task Force recognizes that these issues are outside the scope of an incorporation statute and calls for consideration of additional protections for not-for-profit corporations and their directors and officers as set out in Recommendation 24.

6.3 Indemnification and Insurance

Recommendation 21: The Task Force recommends that, under the new Act, not-for-profit corporations should be permitted to indemnify their officers and directors and purchase directors' and officers' liability insurance. The current restriction in the *OCA* and in the *Charities Accounting Act* and related regulations should be repealed.

6.4 Limiting Liabilities of Directors and Officers

Recommendation 22: The Task Force recommends that the new Act should exempt directors and officers from personal liability, if they can demonstrate good faith and due diligence. The Task Force prefers the provisions of the *Saskatchewan Act*, which were added in 2003 and set up a good faith defence.

Recommendation 23: The Task Force recommends that volunteer directors and officers should not be shielded from liability differently than those who receive remuneration. Remuneration *per se* is not a basis for shielding directors and officers from wrongful acts to which the established defences do not apply. Further, while remuneration of directors and officers in business and not-for-profit corporations differs, as it also does among different business corporations, there is need for a consistent approach to liability of directors and officers as a whole.

6.5 Need for broader reform on liability issues affecting Not-for-Profit Corporations

Recommendation 24: The Task Force recommends implementation of recommendations for statutory reform by the Government's Ontario Voluntary Partnership (OVP) and its *Insurance and Liability Resource Centre for Nonprofits* (ILRCN) to reduce the impact of heightened insurance costs on charities and public benefit not-for-profit corporations and the communities they serve.

ISSUE 7 - CONFLICT OF INTEREST

Recommendation 25: The Task Force recommends the conflict of interest provisions of the new Act should be parallel to those under the OBCA. However, a director declaring a conflict should be entitled to respond to questions about the issue after the conflict is declared, but must leave prior to any discussion or debate and prior to the vote itself. This is unclear under the OBCA and should be clarified in the new Act.

Recommendation 26: The Task Force recommends that the conflict of interest rules under the new Act should go beyond contracts to include other types of conflicts of interest. In particular, the conflicts rules should apply, as a minimum, to "transactions," which is the standard under the OBCA. The new Act should also require any person receiving remuneration from the organization while sitting as a volunteer member of the Board to disclose any such engagement under the conflict rules.

Recommendation 27: The Task Force recommends that the new Act should apply to both directors and officers, as is the case under the OBCA.

RECOMMENDATIONS FOR REFORM

ISSUE 1 - BOARD COMPOSITION

What provisions should be included in the reformed Act regarding composition of the board?

1.1 Number of Directors

Q1. What should be the minimum number of required directors? If a classification of not-for-profit corporations is adopted should the minimum number change depending on the class?

Recommendation 1: Assuming that the new Act is an organizational statute, there is no need for the Act to be prescriptive about the number of directors, beyond one. The new Act should provide for at least one director so that the board can function on incorporation. Therefore the Task Force recommends that the new Act should fix the minimum number of directors at one, consistent with the OBCA. If a classification of not-for-profit corporations is adopted, there is no reason for the minimum number of directors to change from class to class.

Q2. Should a minimum number of outside directors be required?

Recommendation 2: The Task Force recommends that the new Act should not require outside directors. Outside directors are not required by business corporations and should not be required by not-for-profit corporations. Furthermore, efforts to require the appointment of outside directors can lead to unnecessary directors simply to meet regulatory requirements and for no valid corporate reason.

Q3. Should the reformed Act permit a corporation to specify a minimum and maximum number of directors in its incorporation document?

Recommendation 3: The Task Force recommends that the new Act should, as noted above, require one director on incorporation, but no other particulars in respect of a minimum and maximum number of directors. The corporation should be able to specify its preferences in its own incorporation document.

1.2 Qualifications of Directors

Q1. Should there be a requirement that all or some of the directors be members of the corporation?

Recommendation 4: The Task Force recommends that the new Act should not impose requirements that some of the directors are members of the corporation. The definition and role of members vary greatly among not-for-profits - from paid-up members of a snowmobilers' club to the members of a religious congregation. The needs of different corporations vary and it should be open to the Board of the corporation to determine the role of membership in board governance. This should not be prescribed by statute.

Q2. Should there be any other qualifications required of directors?

Recommendation 5: The Task Force recommends that the new Act should prescribe the same qualifications of directors as those under the OBCA, which include some basic pre-requisites such as being of adult age and not being a bankrupt. However, residency is not presently included under the OCA and should not be included under the new Act. It is not an appropriate statutory criterion for these types of organizations and, in any event, tends to set up technical requirements that can be easily avoided through extraneous appointments.

ISSUE 2 - TERM OF OFFICE

Should a limit on directors' terms of office be set out in the reformed Act?

Q1. *Should a maximum term of office for directors be included in the reformed Act? If so, should it be three years as in the case of the OBCA, Bill C-21, and the Saskatchewan Act?*

Recommendation 6: The Task Force recommends that the new Act should include a maximum term of office for directors of three years, as in the case under the OBCA. While Directors may stay on for an unlimited number of terms, as recommended below, with the support of their boards, the length of each term should be fixed to enable the Board to vote from time to time on a director's continued role on the Board. Three years is a reasonable democratic timetable and is consistent with the prescribed term for directors of business corporations under the OBCA.

Q2. *Should a limit on directors' terms of office be set out in the reformed Act?*

Recommendation 7: The Task Force recommends that the new Act should not include a limit on directors' terms of office. Not-for-profit corporations may benefit from long-standing volunteer directors and may choose to limit the number of terms in their by-laws, but there should not be a statutory restriction.

ISSUE 3 - DIRECTORS' MEETINGS

What rules should be included in the reformed Act regarding notice of directors' meetings and should resolutions be allowed in lieu of meetings?

3.1 Notice of Meetings

Q1. What rules should be included in the reformed Act regarding notice of directors' meeting?

Recommendation 8: The Task Force recommends that, where the time and place of an adjourned meeting is announced at the original meeting, notice of the adjourned meeting should not be required. No other rules should be included in the Act regarding notice of directors' meetings.

Q2. Should notice provisions be included in the reformed Act similar to those contained in the OBCA, Saskatchewan Act, or Model Act?

Recommendation 9: The Task Force recommends that the new Act should include notice provisions that are identical to those in the OBCA. The OBCA states that a directors' meeting may be called by a quorum of directors and notice must be sent no less than ten days in advance of the meeting. The notice must include the time and place of the meeting and must specify the general nature of the business to be transacted at the meeting. The notice must be sent to the latest address of the director as shown on the records of the corporation. A director may waive his/her notice of a meeting "in any manner" and "at any time." Attendance of a director at a meeting of directors constitutes a waiver of notice, unless a director attends the meeting "for the express purpose of objecting to the transaction of any business that the meeting is not lawfully called. The Task Force agrees with the OBA that the new Act should allow for oral notice in appropriate circumstances, and for notice by way of publication in a newspaper or posting on a website, which will necessitate an exception to the *Electronic Commerce Act*, 2000.

3.2 Resolution in Lieu of Meeting

Q1. Should resolutions in lieu of meetings be permitted in the reformed Act?

Recommendation 10: The Task Force recommends that resolutions in lieu of meetings should be permitted under the reformed Act, as they are both presently and under the OBCA. Questions arise about the extent to which approval standards should be higher when an issue is dealt with by resolution rather than by meeting, given that the usual discussions associated with meetings may not have occurred. On balance, the Task Force recommends that this should be an issue that corporations may choose to address in their by-laws but should not be prescribed by statute.

ISSUE 4 - RESIGNATION AND REMOVAL

Should more extensive provisions be created to govern the resignation and removal of directors?

Q1. Should more extensive provisions be created to govern the resignation and removal of directors?

Recommendation 11: The Task Force recommends that the new Act should include identical provisions to the OBCA regarding the resignation of directors. There is no need to distinguish between directors of business and not-for-profit corporations on the laws governing resignation.

Q2. Should the reformed Act follow other corporate organizational statutes and allow for the removal of directors by ordinary resolution (that is, a majority of votes cast)?

Recommendation 12: The Task Force recommends that the new Act should allow for the removal of directors by ordinary resolution, i.e. by a simple majority of votes cast, consistent with the OBCA and other corporate organizational statutes. Again, as part of an organizational statute, such provisions become default rules on incorporation which may be supplemented in the corporation's by-laws should it choose to do so.

Q3. Should the reformed Act contain provisions similar to those of the OBCA, Bill C-21, and the Saskatchewan Act regarding the resignation of directors?

Recommendation 13: Per its Recommendation 11, the Task Force recommends that the new Act should include identical provisions to the OBCA regarding the resignation of directors.

Q4. Should the reformed Act contain director rights similar to those of the OBCA, Bill C-21, and the Saskatchewan Act in the case of a removal or resignation?

Recommendation 14: The Task Force recommends that the new Act should include rights of directors on a removal or resignation that are the same as those in the OBCA, which provisions the Task Force finds equally appropriate for not-for-profit corporations.

ISSUE 5 - OFFICERS

What provisions should the reformed Act contain with respect to officers?

Q1. *Should the reformed Act provide for the appointment of specific officers?*

Recommendation 15: The Task Force recommends that the new Act should not provide for the appointment of specific officers. Rather, not-for-profit corporations should be able to determine their own requirements for officers and to amend them as their needs change from time to time. While some have suggested there should be a default provision providing for a President, different organizations may prefer to have a Chair, a President, an Executive Director or some combination of these officer roles.

Q2. *Should any of the officers be required to be directors?*

Recommendation 16: The Task Force recommends that the new Act should not require any of the officers to be directors.

Q3. *What provisions should the reformed Act contain with respect to officers?*

Recommendation 17: The Task Force recommends that the new Act should not prescribe the number or titles of officers. The *Model Act*, OLRC, OBCA and the Saskatchewan Act all recommend or include quite detailed statutory obligations in respect of officers. The Model Act, for example, stipulates that a president, treasurer, and secretary are each required, unless otherwise stipulated by the corporation in its by-laws. As noted in Recommendation 15 above, the new Act should not provide for the appointment of specific officers. Rather, not-for-profit corporations should be able to determine their own requirements for officers and amend those requirements as the organization's needs change from time to time.

ISSUE 6 - DIRECTORS' AND OFFICERS' LIABILITY

Should a general duty of care and loyalty, and defences for directors and officers, be formulated and incorporated into a statutory provision? Should liability of directors and officers be limited? What provisions should the reformed Act contain with respect to officers?

6.1 Duty of Care and Loyalty

Q1. Should the standard for the duty of care and loyalty be an objective test (such as that of the OBCA and Bill C-21) or a modified subjective test (as recommended by the Panel on Accountability and Governance in the Voluntary Sector)?

Recommendation 18: The Task Force recommends that the new Act should adopt an objective standard for the duty of care and loyalty, consistent with the provisions in the OBCA, and not the modified subjective test recommended by the Panel on Accountability and Governance in the Voluntary Sector.

6.2 Due Diligence Defence

Q1. Should a due diligence defence such as that found in the OBCA be included in the reformed Act?

Recommendation 19: The Task Force recommends that the new Act should incorporate a due diligence defence, consistent with the provisions in the OBCA.

Q2. Should a good faith reliance defence be included in the due diligence defence (as is the case under the OBCA and Bill C-21)?

Recommendation 20: The Task Force recommends that directors and officers of not-for-profit corporations should be able to plead a good faith reliance defence as part of the diligence defence, consistent with the provisions for directors and officers of business corporations under the OBCA. However, the Task Force agrees with the OBA that directors should be entitled to plead reliance on oral as well as written reports. The question arises whether protections in addition to the good faith reliance defence are appropriate for director of not-for-profit corporations. The Task Force recommends that consideration is required of the heightened liability affecting directors of not-for-profit corporations, particularly given the recent extension of the doctrine of vicarious liability of these organizations to the wrongful acts of not only their employees but their volunteers. The Task Force recognizes that these issues are outside the scope of an incorporation statute and calls for consideration of additional protections for not-for-profit corporations and their directors and officers as set out in Recommendation 24.

6.3 Indemnification and Insurance

Q1. Should not-for-profit corporations be permitted to indemnify and/or purchase liability insurance for their officers and directors?

Recommendation 21: The Task Force recommends that, under the new Act, not-for-profit corporations should be permitted to indemnify their officers and directors and purchase directors' and officers' liability insurance. Indeed, such practices and insurance policies are necessary to attract experienced professional directors willing to serve as volunteers which is an important matter of public policy and corporate governance. The Task Force was made aware of some concerns or views that these insurance costs are not appropriate charitable expenses or uses for donor funds, or that insurance and indemnification might even be considered a form of remuneration to directors, which is prohibited. The Task Force found these concerns ill-founded but wishes to ensure that the law makes clear that these are valid expenses for not-

for-profit corporations and do not constitute remuneration. The current restriction in the *OCA* and in the *Charities Accounting Act* and related regulations should be repealed.

6.4 Limiting Liabilities of Directors and Officers

Q1. Should directors and officers be shielded, in whole or in part, from personal liability, or be provided with caps on personal liability? If so, should the reformed Act follow the provisions in the Saskatchewan or Nova Scotia Act, or include a liability cap such as that found in the Virginia Code?

Recommendation 22: The Task Force recommends that the new Act should exempt directors and officers from personal liability, if they can demonstrate good faith and due diligence. The Task Force prefers the provisions of the *Saskatchewan Act*, which were added in 2003 and set up a good faith defence.

Q2. Should volunteer directors and officers be shielded from liability differently than directors and officers who are remunerated?

Recommendation 23: The Task Force recommends that volunteer directors and officers should not be shielded from liability differently than those who receive remuneration. Remuneration *per se* is not a basis for shielding directors and officers from wrongful acts to which the established defences do not apply. Further, while remuneration of directors and officers in business and not-for-profit corporations differs, as it also does among different business corporations, there is need for a consistent approach to liability of directors and officers as a whole.

6.5 Need for broader reform on liability issues affecting Not-for-Profit Corporations

The Task Force acknowledges that, as a matter of law and public policy, the allocation of risk to not-for-profit corporations for the wrongful actions of their volunteers requires review that goes beyond the scope of this Act.

The Ontario Government recently established an Ontario Voluntary Partnership (OVP) through its Ministry of Citizenship and Immigration (MCI). The OVP oversees the *Insurance and Liability Resource Centre for Nonprofits* whose mandate is to address the insurance and liability issues facing Ontario's charities and not-for-profit corporations, arising from volatile pricing of insurance premiums, particularly for organizations providing services to vulnerable communities. Such services are often associated with high levels of liability and risk and therefore attract high premiums that can result in the withdrawal of such programs and services. The application of the legal doctrines of vicarious liability and joint and several liabilities to our charities and not-for-profits now render them liable in law for the wrongdoings of Canada's 22.2 million volunteers. As a matter of law and public policy, this allocation of risk requires review. The OVP is a partnership between the insurance, academic and not-for-profit sector, facilitated by the Government of Ontario. The Centre is identifying reforms aimed at making insurance more affordable for voluntary sector organizations. Reduced insurance costs will ensure that donor funds can be applied to program delivery rather than insurance costs.

Recommendation 24: The Task Force recommends consideration of the pending recommendations for statutory reform by the Government's Ontario Voluntary Partnership (OVP) and its *Insurance and Liability Resource Centre for Nonprofits* (ILRCN) to reduce the impact of heightened insurance costs on charities and public benefit not-for-profit corporations and the communities they serve.

ISSUE 7 - CONFLICT OF INTEREST

What should be included in conflict of interest provisions of the reformed Act?

Q1. Should the conflict of interest provisions of the reformed Act follow the OBCA, Saskatchewan Act, and Bill C-21 rules, or should different provisions be included?

Recommendation 25: The Task Force recommends the conflict of interest provisions of the new Act should be parallel to those under the OBCA. The revised OBCA Code was recently put into place - in 2007. However, there is a lack of clarity in one of the provisions of the new Code and the new Act should deal with the issue more clearly. In particular, the OBCA Code provides that once a conflict has been declared, the person declaring the conflict must leave the meeting. Corporate counsel are widely of the view that those in a conflict are entitled to respond to questions about the issue, but shall leave the meeting prior to any discussion and the vote. The Task Force supports this interpretation and recommends that this should be clarified in the new Act.

Q2. Should the conflict of interest rules go beyond contracts to include other types of conflicts of interest?

Recommendation 26: The Task Force recommends that the conflict of interest rules under the new Act should go beyond contracts to include other types of conflicts of interest. In particular, the conflicts rules should apply, as a minimum, to “transactions,” which is the standard under the OBCA. In addition, the conflict provisions of the new Act should make it clear that there is nothing prohibiting a person who receives remuneration from the organization in other capacities, such as a professional engagement as the organization’s accountant or in a staff role as CEO, from serving on the Board. The new Act should require any person receiving remuneration from the organization while sitting as a volunteer member of the Board to disclose any such engagement under the conflict rules.

Q3. Should both directors and officers be caught by these provisions?

Recommendation 27: The Task Force recommends that the new Act should apply to both directors and officers, as is the case under the OBCA.

CONCLUSIONS

The *Ontario Corporations Act* is more than a half-century old and can no longer be considered effective framework legislation for Ontario's nonprofit corporations. The Act, almost in its entirety, requires updating, with more contemporary and flexible provisions within a better organized statute. The Task Force recommends passage of a new Ontario Not-for-Profit Corporations Act, an organizational statute drafted as companion legislation to the *Ontario Business Corporations Act*. These two statutes should be harmonized, except where there is a clear and compelling case for different measures.

APPENDIX I - WHO IS THE NATIONAL SECTOR TASK FORCE ON NOT-FOR-PROFIT CORPORATIONS LAW REFORM

The National Sector Task Force on Not-for-Profit Corporation's Law Reform was convened by Imagine Canada to address:

- a) the reform activities initiated by the Ontario government to modernize its own legislation,
- b) efforts by the BC law reform community to bring about reforms in that Province,
- c) the opportunity to use Ontario and BC initiatives to bring about reforms in other Provinces, and
- d) the merits of seeking to get this issue back on the federal agenda, given the collapse of Bill C-21.

The Task Force is a joint Sector-Charities Bar collaboration which brings together leading representatives from Canadian and provincial Bar associations, leading coordinating and advocacy groups in the sector, and select charities and not-for-profit organizations themselves. A list of Task Force Members and biographical highlights are set out in [Appendix 1](#).

Biographical highlights, in alphabetical order, are as follows:

Ian Clark, Professor of Public Policy, University of Toronto; former Deputy Minister, Consumer and Corporate Affairs Canada; former CEO, Council of Ontario Universities.

Clifford Goldfarb, Partner, Gardiner Roberts LLP, Vice-Chair, Charities and Not-for-Profit Section, OBA.

Jennifer Holmes, External Relations, Federal and Provincial Affairs, YMCA Ontario.

Colleen Kelly, Executive Director, Volunteer Vancouver; Sector representative on the BC Law on Not-for-Profits Corporation Law Reform.

Teri Kirk, Imagine Canada, Vice President, Public Policy and Regulatory Affairs; former Director, Legal Services, Consumer & Commercial Relations, Government of Ontario.

Susan Manwaring, Miller Thomson LLP; Chair, Charities and Not-for-Profit Law Section, Canadian Bar Association; Chair, Canadian Association of Gift Planners, Government Relations Committee.

David Stevens, Gowlings Law Firm; Chair, Co-Chair, OBA Working Group on Not-for-Profit Corporation Law Reform.

APPENDIX II - OVERVIEW OF THE NOT-FOR-PROFIT SECTOR

Canada's community nonprofit sector is a critical contributor to our national economy. It is comprised of more than 161,000 corporate entities, including 81,000 not-for-profit corporations and 80,000 registered charities¹. Of these, approximately 50,564 are incorporated under the Ontario Act.² The sector employs 2 million fulltime equivalent workers across Canada which constitutes 11.1% of the economically active population of Canada. The sector contributes 7.8% annually to Canada's gross domestic product (GDP). When volunteer hours are included, this figure rises to 8.6% of GDP. Total annual sector revenue as of 2003 was \$112 billion making it larger than the mining, oil and gas and auto manufacturing sectors.

Each year, sector organizations raise \$9 billion in donations from 22.2 million donors and attract 11.8 million volunteers who contribute 2 billion hours of volunteer time each year. In Ontario as elsewhere, not-for-profit corporations encompass health charities, day-care centres, environmental and international development groups, food banks, places of worship, hobby associations, hospitals, opera companies, private schools, social clubs, sports clubs, symphonies, trade associations, and youth groups. In Ontario, the Province has delegated its authority to regulate select industries, such as car dealers and real estate brokers, to nonprofit corporations. These organizations often fill gaps that are unmet by governments and corporations. They provide opportunities for citizen engagement, and cater to special needs among the homeless, persons with disabilities, immigrants and other minorities. They give a voice to important public issues and work to protect fundamental human and democratic rights.

APPENDIX III - WHO IS IMAGINE CANADA

Imagine Canada is a not-for-profit corporation and a registered charity with offices in Calgary, Toronto and Ottawa. With over 1100 members, Imagine Canada looks into and out for Canada's nonprofit and charitable organizations and socially conscious businesses and champions the work they do in our communities. In particular, Imagine Canada (formerly known as the Canadian Centre for Philanthropy), carries out the following roles:

- through its *John Hodgson Library*, houses the largest online research facility on nonprofits in Canada, and has been generously supported by the Ontario Trillium Foundation,
- through its *Research group*, provides research on giving, volunteering and participation and other issues of interest to Canada's charities non not profits,
- through its *Public Policy and Regulatory Affairs group*, provides input on policy and legislation of concern to Canada's charities and operates the Ontario Risk Management and Insurance Resource Centre for Nonprofit Organizations under the Ontario Voluntary Partnership,
- through its *Marketing, Membership and Social Engagement group*, provides services to over 1,200 members, and
- through its *Imagine Canada Caring Companies™ Program*, encourages Canadian corporations to contribute by committing 1% of their pre-tax earnings to charities.

APPENDIX IV - SUPPORT OF THE ONTARIO TRILLIUM FOUNDATION

The generous financial support of the Ontario Trillium Foundation to assist in the costs of convening the Task Force in Ontario has been greatly appreciated. For more information on the OTF, see www.trilliumfoundation.org.

¹ All data in this brief are drawn from the following sources: *Greater than the Sum of Our Parts*, Imagine Canada, 2005, p.18; *Cornerstones of Community*, Statistics Canada, 2005 Catalogue 61-533-XPE, page 11; The Canada Survey of Giving, Volunteering and Participating (CSGVP); and *National Overview of Findings from a National Survey on the Quality of Life in Canadian Communities*, Strategic Counsel, (2005).

² Statistic provided by the Companies and Personal Property Security Branch of the Ministry of Government Services.

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