



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 III
RESPONSE TO CONSULTATION PAPER 3

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EXECUTIVE SUMMARY

The National Sector Task Force on the Modernization of Not-for-Profit Corporations Law (the “Task Force”) is pleased to provide this third Submission in response to Consultation Paper 3 issued by the Government of Ontario as part of its Business Law Modernization Project.

This Submission brings forward numerous recommendations in response to four issues -- membership, corporate finance, articles or by-laws and self-perpetuating boards -- raised in the Government’s third Consultation Paper. These issues tend to raise important distinctions between business and not-for-profit corporations and therefore the Task Force has called for a number of provisions that will distinguish a new “Not-for-Profit Corporations Act” from the *Ontario Business Corporations Act*.

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 community 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 important modernization exercise.

RECOMMENDATIONS FOR REFORM

ISSUE 1 – MEMBERSHIP

- 1.1 Membership Lists
- 1.2 Transferability of Membership Interest
- 1.3 Termination of Membership and Disciplinary Measures
- 1.4 Quorum at Members' Meetings
- 1.5 Members' Voting Agreements
- 1.6 Member Remedies

1.1 Membership Lists

General Comments

One of the principles informing the National Sector Task Force's recommendations is the goal of harmonizing a new Ontario Not-for-Profits Corporations Act (ONCA) with the *Ontario Business Corporations Act (OBCA)*, unless there is a clear rationale for a distinct approach. Membership is one of those points of distinction, for 2 reasons. First, business corporations do not have members and therefore the OBCA does not address members' issues. Second, to the extent that shareholders of business corporations might be seen to be analogous to members of not-for-profit corporations, the fact is that shareholders and members have very distinct roles and interests in their respective organizations. The primary distinction is that shareholders have economic and commercial interests in the corporation that tend to call for economic remedies, while members of not-for-profit corporations tend to have non-commercial interests in their organizations. With some select exceptions, such as members of a private golf club, most members of nonprofit organizations -- whether service groups, advocacy groups, faith-based organizations or a diverse array of community organizations-- have different interests than shareholders that call for a simpler set of rights, obligations and remedies, and can seldom merit litigation by either party.

Apart from this distinction between shareholders and members, the law also distinguishes between types of members of nonprofit organizations. The principle distinction is between what are often called "true members" and "other members" and tends to translate into voting vs. non-voting members of the corporation. It is well understood that the rights and remedies of, for example, the thousands of members of a sports club, political party or advocacy group will be distinct from the few voting members entrusted with determining some of the key issues facing the organization.

The Task Force recommends the following overriding principles with respect to membership be adopted in the new Act:

1. The Act should only address the rights and obligations of voting members – relationships between organizations and their non-voting members should be outside the scope of the Act;
2. Not-for-profit corporations should be empowered by the Act to set up a membership classification system in their articles or by-laws, as is open to OBCA corporations, to provide for distinct categories of members, such as voting and non-voting members;
3. Any membership classification system in a corporation's articles or by-laws should identify the distinct rights of each class of member established by the corporation, such as access to financial information or membership lists; and

4. Where the articles or by-laws are silent, all members will be deemed to be voting members as provided for in the Act and each member shall be entitled to the same set of rights.

Q1. Who should be given access to membership lists?

The Task Force favours Option B – the Act should restrict access to membership lists as the default provision in the Act, subject to the ability of the corporation to remove any such restrictions and provide for open access to membership lists in its articles or by-laws.

The Task Force is informed by the view that the role of members can vary substantially among nonprofit organizations -- from wide-open membership in a sports club to restricted membership in a political party or faith-based organization. Organizations should be given wide latitude to design and adopt their own constitutional and democratic principles. The Act should therefore provide for a limited number of restrictions that most not-for-profit corporations will want to have in place. These statutory restrictions should be consistent with those in the OBCA governing access to shareholder lists, namely:

1. Upon payment of a reasonable fee and the sending of a statutory declaration to the corporation, three classes of persons may have access as of right to the membership list: directors, officers and voting members of the corporation;
2. The statutory declaration must state that the list will not be used except for purposes related to the corporation and as permitted by the Act;
3. The corporation may, in its articles or by-laws, expand the classes of persons or organizations that have access as of right; and
4. Persons outside the three designated classes in the Act, and outside any additional classes of persons in the corporation's articles or by-laws, may have access to a membership list on application to and approval by the court.

It is acknowledged that, under this recommendation, a person falling outside one of the three statutory classes might have a legitimate reason for requesting the list, such as a journalist or researcher, but would be denied access, unless the articles or by-laws or the court provides otherwise. This concern is balanced against the privacy rights of members of organizations who may find that their volunteer and community-based activities, for example, are personal in nature and should not be readily disclosed to the media, an employer or, quite simply, anyone who asks.

The Task Force does not see any basis for placing higher or different obligations on registered charities to disclose membership lists, as is the case under the Saskatchewan Act, and recommends against this approach.

The Task Force does not feel that access should be extended to creditors as of right under the Act. Organizations that incorporate have invested in creating a corporate structure such that the organization is separate from its members for creditor and other purposes. Creditors have other remedies against the corporation and its directors, which do not extend to the members, and should not have access to membership lists as of right.

Q2. Should there be a requirement for an affidavit?

The Task Force favours Option A – an affidavit should be required, which is consistent with the *status quo* for both business and not-for-profit corporations under the OBCA and the CA

respectively. This recommendation arises out of the need to balance the privacy rights of members with the transparency and disclosure obligations of the organization.

The legislation should set out the statutory purposes for which memberships list may be used, and should require an applicant to submit an affidavit to the organization committing the applicant to using the list for such statutory purpose only. The requirement for an affidavit ensures that those using membership lists are aware that there are statutory limitations on the uses of the list and commits the applicant in law to using the list in that way. It is the Taskforce's view that the language in the current Act allowing for "any other purpose" is too broad and defeats the objective of a clear set of approved statutory uses for membership lists and should be removed in the new Act.

Only those with a legitimate right to use the list for one or more of the statutory purposes, such as to influence a vote, should have access to membership lists.

The statute should also require that any applicant submit the fee set by the organization. If the organization does not set a fee, no fee is payable. The purpose of the fee is to inhibit frivolous requests and to cover the organization's costs of producing the list and ensuring that it is used for the approved statutory purposes set out in the affidavit only.

While it is acknowledged that these processes impose costs and possible delays on those seeking information about an organization's members, which may be troublesome in circumstances such as time-sensitive media requests, these processes are appropriate in seeking to address the competing privacy rights of members.

Q3: Should there be a right of appeal?

The Task Force favours Option B – the new Act should not provide for a right of appeal on decisions by not-for-profit corporations to deny access to its membership list in accordance with the Act or its articles or by-laws.

Rather, the general remedy clause in the Act would apply and there is no need for an additional specific remedy granting rights of appeal on this particular issue. Organizations are entitled to rely on the statutory rules and their own articles or by-laws in making access decisions and should not then be subject to expensive and potentially frivolous rights of appeal.

Q4: What information should be included in the membership list?

The Task Force favours Option C – the new Act should allow not-for-profit corporations to determine what information to include in their membership lists for disclosure to qualified applicants.

This issue represents a very sensitive balancing of transparency obligations of organizations with the privacy rights of their members. The Task Force recommends a minimal statutory standard, together with full flexibility on the part of the corporation to determine other or additional standards in its articles or by-laws. The statutory standard should restrict disclosure obligations to directors, officers and voting members only and allow the organization to charge a fee.

On the sensitive issue of disclosing members' contact information, the basic statutory requirement should be that enough information must be given by the corporation in the membership list to allow the member to be contacted by the successful applicant. Indeed, the primary purpose of the membership disclosure obligations is to facilitate communications with members. To that extent, members are deemed to have waived privacy rights. Currently, under

the CA, any person may obtain a list of the corporation's members and contact information if it is to be used for purposes in connection with the corporation. Two qualifications could be provided in the new Act to limit the impact on the privacy rights of members. First, the Act could provide that any member has the right to designate a single method of contact for disclosure purposes and the associated contact information, e.g., an email address, a home telephone number, or business address. Second, the Act could provide that a corporation has the option to refuse to provide the list, provided it undertakes to circulate a notice from the party who requested it to all members. Again the corporation could charge a reasonable fee for this purpose. At a time of heightened concern about privacy rights and mass digital distribution systems, the Task Force recommends more emphasis on privacy issues of members under a modern statutory regime.

The Task Force recommends carrying forward of the offence and penalty provisions under the current Act, which establish that improper uses of membership lists can constitute regulatory offences. For example, it is an offence to sell or purchase membership lists or to use these lists to send advertising to members and for other purposes that are not connected to the corporation.

1.2 Transferability of Membership Interest

General Comments

The CA provides that, subject to a contrary provision in the letters patent, membership interests are not transferable and membership ceases on the death of a member. Under the OBCA, any restrictions on the transferability of any class of shares must be set out in the articles of the corporation.

Q1. Should memberships be transferable?

The Task Force recommends Option A - memberships should not be transferable, unless otherwise stated in the articles or by-laws, in accordance with the status quo. The not-for-profit corporation thereby retains its ability to determine who is a member. Not-for-profit corporations may choose to broaden transferability rights in their articles or by-laws, but should not be required to allow transferability as a matter of law.

Q2. Should the answer vary based on the type of not-for-profit corporation (e.g., charitable, religious, etc.)?

No, the Task Force recommends that all not-for-profit corporations that fall within the scope of the Act should be subject to the default provision recommended under Q1 above, with an ability to broaden transferability rights in their articles or by-laws as they deem appropriate.

1.3 Termination of Membership and Disciplinary Measures

Q1. Should members' rights upon discipline or termination be guaranteed in the reformed Act?

The CA does not presently establish any rules in respect of rights of members on discipline or termination of membership. It only states that a membership interest terminates upon the death or resignation of a member and allows directors to designate rules on termination and suspension of membership in the articles or by-laws.

The Task Force recommends adoption of the language of the California Corporations Code which provides that any suspension or termination of membership, or of any membership right, must be done in good faith and in a fair and reasonable manner. A "fair and reasonable manner" should necessitate (i) setting out the procedure in the corporation's articles or articles or by-laws and (ii) giving the member prior notice of termination and the reasons for such termination.

Having provided such notice and reasons in accordance with a stated set of rules, not-for-profit corporations should not be required as a matter of statute law to provide the members with an oral or written hearing. In this respect, the Task Force does not recommend adoption of the California Code requirement granting members the right to be heard orally or in writing on such decisions. This is an undue level of process for termination of what are overwhelmingly non-commercial interests. A not-for-profit corporation may adopt this additional level of process in its articles or by-laws, but should not be required to do so. Furthermore, members will be entitled to rely on the general remedy provisions in the Act, without need for a specific remedy under this provision, where there are serious allegations to be resolved.

Q2. Should members be entitled to certain guaranteed rights upon termination which will be explicitly set out in the reformed Act? If so, what should those rights be?

The Task Force favours a modified Option B as described in Q1 above – rights should be guaranteed in the reformed Act in the form of the general remedy provision in the Act, and not through an additional or specific remedial right.

1.4 Quorum at Members' Meetings

Q1. Should quorum rules be set out in the reformed Act or left up to the articles or by-laws?

The Task Force recommends that there be no quorum obligations, as is the case under the existing Act. The Act would therefore provide that subject to the articles or by-laws, there are no rules governing quorum. This approach is informed by the fact that many nonprofit organizations choose to be small informal organizations, much like small and micro businesses, run by an individual, family or very small group of individuals, with only a single voting member. Larger or more formal not-for-profit corporations should therefore be authorized to determine any quorum requirements that they wish to impose on the organization.

Q2. Should the reformed Act contain explicit rules on quorum for member meetings? If so, what should they be?

The Task Force favours a modified Option B – the default provisions should provide that there are no quorum obligations, subject to the articles or by-laws. The quorum provisions contained in Bill C-21 and the Saskatchewan Act set out appropriate principles, as follows:

- the articles or by-laws may set a quorum for a meeting of members and where the articles or by-laws are silent, a quorum is a majority of members entitled to vote,
- if a quorum is present at the opening of a meeting, the meeting can proceed even if a quorum is not present throughout the entire meeting -- in other words, "once a quorum always a quorum" -- the decision of a member to leave during the scheduled meeting time should not defeat the rights of other members to complete the meeting;
- organizations that find that this provision tends to be used to defeat the voting rights of the broader membership may provide for stricter quorum rules in their articles or by-laws;
- where there is no quorum at the opening of a meeting, and the articles or by-laws require a quorum, no business can be transacted and the meeting may be adjourned; and
- where a corporation has only one member, or only one member of any class of members, that member constitutes a meeting.

1.5 Members' Voting Agreements

Q1. Should the reformed Act allow members to enter into voting/pooling agreements?

The Task Force favours including an express provision enabling voting agreements. Presently, the Act is silent. Therefore, given that there is no statutory prohibition barring voting agreements, the

enforceability of such agreements is not clear. The statutory provision expressly authorizing voting agreements would address this uncertainty.

Further, although Consultation Paper 3 does not address the issues of proxies, the Task Force recommends a default rule denying proxies, subject to the right of not-for-profit corporations to allow proxies in their articles or by-laws, subject to restrictions and qualifications on their use.

1.6 Member Remedies

General Comments

One of the principles that underscore the recommendations of the Task Force is the benefits of parity between a new Not-for-Profit Corporations Act and Ontario's existing business corporations law (the OBCA) unless there is a clear rationale for different rules. The issue of member remedies is one of those points of distinction. Shareholders have essentially commercial interests in business corporations that are different than the largely non-commercial interests and relationship that members have with not-for-profit corporations. These very distinct types of relationships and interests tend to call for distinct remedies for members as opposed to shareholders. The Task Force's recommendations on member remedies flow from this important distinction.

(a) Compliance Orders

Q1. Should the availability of compliance orders be extended to apply in cases of non-compliance with the corporation's articles and articles or by-laws?

Yes, compliance orders should be available to complainants, not only for alleged cases of non-compliance with the Act but also with the not-for-profit corporation's articles or articles or by-laws. This is consistent with shareholder rights under the OBCA.

Q2. Should the criteria for obtaining a compliance order be broadened to allow complainants to seek compliance with duties in addition to those set out in the reformed Act, such as duties imposed by the articles and articles or by-laws of the corporation?

Yes, as recommended in Q1 above.

Q3. Who should qualify as a complainant - members and creditors only, or should other complainants be allowed to bring the action as is the case in business corporation statutes such as the OBCA and other not-for-profit statutes such as the Saskatchewan Act and Bill C-21?

The status of complainant should be extended as of right to directors, officers and members in the Act and, by by-law, to such additional classes of complainants that the not-for-profit corporation chooses to recognize and, with approval of the court, to any other person. The status of complainant should not be extended, as of right, to creditors. Creditors have other commercial remedies in law and do not need access to a specific compliance order remedy.

(b) Oppression Remedy

Q1. Should the reformed Act provide for an oppression remedy?

On balance, the Task Force recommends against the inclusion of an Oppression remedy in the new Act, i.e., Option A.

The oppression remedy refers to the right of members to apply to a court to seek relief from oppressive or unfair acts or omissions of the corporation. The provisions in the OBCA are

complex and unnecessary for non-profit corporations. Interpretation of these lengthy and complex provisions is often beyond the scope of the volunteer role of many boards of nonprofit organizations and necessitates engaging legal counsel, which undermines the spirit and direction of a modernized Act. Further, these provisions have been proven to drag organizations into complex and protracted litigation, which may be of more merit where commercial interests are at stake, but are not appropriate to the culture and resources of nonprofit organizations. Further, many organizations now provide for a voluntary or mandatory mediation or arbitration clause that enables members and organizations to resolve their non-economic differences more affordably and expeditiously than through the exercise of an oppression remedy. Again, members of not-for-profits have important but different interest that tend to be best addressed by exiting the organization rather than engaging in complex expensive litigation. This is particularly so given that the lengthy statutory provisions tend to result in the need for a common law interpretation i.e. where the court shall decide. Parties are entitled to apply to the court under the general remedy provisions in the Act and the statutory oppression remedy should be eliminated.

Q2. If the oppression remedy is included in the reformed Act, should it apply to religious corporations?

The Task Force favours Option A - do not include an oppression remedy in the new Act. If the remedy must be included, there is no need to render it more complex by distinguishing between oppression remedies for religious and other nonprofit organizations.

Q3. Who should qualify as a complainant - members only, or should other complainants, such as former members, directors and former directors, and the government, etc. be allowed to bring the action?

The Task Force recommends against an oppression remedy, but if one is to be included, it should be open, as of right, to only three classes of complainants – directors, officers and members of the corporation.

(c) Derivative Action

General Comments

The derivative action refers to the right of members to apply to a court to seek permission to bring an action on behalf of the corporation for an alleged breach by the directors' and officers' of their fiduciary duties to the organizations. The current Act does not provide members with access to a derivative action remedy. This remedy is commonly given to shareholders of business corporations and is included in the OBCA. This remedy was included in the Saskatchewan Act and in Bill C-21.

Q1. Should the derivative action be included in the reformed Act?

The Task Force favours a modified Option B – the new Act should provide for a derivative action for all not-for-profit corporations, including religious organizations. The inclusion of the remedy in the new Act would give members of not-for-profit corporation's similar protections to those accorded shareholders of business corporations.

Q2. Who should qualify to bring forward the action? Members only, or should other complainants, such as former members, directors and former directors, and the government, etc. be allowed to bring the action?

The remedy should be open, as of right, to 3 classes of complainants: directors, officers and members. The organization may, in its articles or by-laws, expand the remedy to other classes and the court would have statutory jurisdiction to allow other complainants.

(d) Dissent and Appraisal

Q1. Should the reformed Act include the dissent and appraisal remedy?

The Task Force favours Option A – the Act should not include this remedy and should simply be silent on point, which is the status quo.

Q2. Should the right to dissent and appraisal be limited to certain types of not-for-profit corporations, such as private membership corporations?

The new Act should not include the dissent and appraisal remedy.

The Task Force has recommended the inclusion of 2 specific member remedies – Compliance Orders and Derivative Actions and recommended against the inclusion of an Oppression remedy and a Dissent and Appraisal remedy. The two specific remedies would be in addition to the general remedy provisions which, together, provide for an appropriate array of remedies without rendering the new Act unduly complex for the needs of not-for-profit corporations.

ISSUE 2 – CORPORATE FINANCE

2.1 Financial review in lieu of audit

2.2 Financial Disclosure

2.3 Borrowing and Debt Issuance

2.1 Financial Review in lieu of an Audit

General Comments

Audits give rise to competing public policy interests: they tend to increase financial accountability to third parties while imposing a financial burden on small community organizations and not-for-profit corporations. It is the strong view of the Task Force that the imposition of a statutory audit obligation on all not-for-profit corporations would be far too burdensome an approach. Indeed, surveys of not-for-profit corporations undertaken by Imagine Canada and other organizations indicate that the time and costs of executing a multiplicity of audits is one of the largest issues facing charities and nonprofits.

Charities already have financial disclosure obligations as part of securing and maintaining their charitable status. The public interest in requiring audits of not-for-profit corporations that are not charities is less compelling as not-for-profit corporations do not confer tax benefits on third parties.

The Canadian Institute of Chartered Accountants (CICA) is in the process of developing new International Finance Reporting Standards (IFRS) and the new Act should not be so rigid that it cannot accommodate the anticipated new standards that are expected at about the same time as a new Act.

Q1. Should certain corporations be allowed to opt for a financial review in lieu of a full audit?

The Task Force favours Option B – allow corporations with an annual income of up to a certain maximum amount to undergo a review in lieu of an audit.

Q2. Should the reformed Act allow corporations with certain revenue amounts to opt for a review in lieu of an audit? If so, what would be an appropriate income range for which to permit a review?

The OBCA exempts non-public offering corporations from an audit if 100% of the shareholders approve. We recommend that not-for-profit corporations undergo a financial review in lieu of an audit where annual revenues are below a defined threshold. It should be noted that not-for-profit corporations do not have income - they have revenues and expenses. Therefore the threshold for requiring an audit should be expressed in terms of gross revenues, not income. Any such threshold should be in the regulations, not the Act, to enable updating and might also be subject to a Cost of Living Adjustment (COLA) clause so that the threshold can be adjusted automatically for inflation.

The Act should be silent on who carries out the audit and should not impose an obligation to use a CA.

In terms of appropriate threshold levels, the Saskatchewan Act sets the threshold at an annual “income” of than \$250,000 on approval of the members. Where “income” is under \$25,000, no audit or review is required. The Task Force does not have a firm opinion the amounts which should be informed by data on the revenues of not-for-profit corporation in Ontario. Intuitively, the Task Force feels that both the upper and lower threshold levels should be considerably higher

– perhaps \$500,000 and \$50,000 respectively. Above these thresholds, an audit exemption should be available where a certain majority of the members presented at a meeting, say 2/3, approve.

2.2 Financial Disclosure

Q1. What should the level of access to financial statements be for members?

The Task Force recommends preserving the status quo under the *Corporations Act*. The Act currently provides that the corporation's directors must present financial statements to members during the annual meeting. The statements for the period must include a statement of profit and loss, a statement of surplus, a balance sheet, and the auditor's report, if applicable. There is no requirement for financial statements to be distributed to members in advance of the annual meeting. In addition to financial statements, corporations are required to keep proper books and accounting records with regard to all financial and other transactions of the corporation. These records are to be open for inspection by any director during regular business hours. Records are to be kept at the corporation's head office or other designated location.

Q2. When should members be provided with the corporation's financial statements?

The Task Force recommends Option A- disclosure at the AGM itself, subject to the articles or by-laws requiring disclosure in advance. The Task Force is aware of the OBA's recommendation that financial statements should be made available to members prior to the annual meeting, per the Saskatchewan Act. However, Task Force members feel that this is an unnecessary burden, particularly on the many small organizations, and that distribution at the AGM has worked well. Organizations who wish to impose a higher burden on themselves can do so in their articles or by-laws.

2.3 Borrowing and Debt Issuance

Q1. Should directors have the power to borrow and issue debt without a specific by-law being passed?

Under the CA, directors may not borrow money or issue debt unless articles or by-laws are in place. The Task Force finds that this need for a by-law to enable borrowing should be repealed and that, under a modern Act, borrowing should be enabled by the statute, subject to a prohibition in the articles or by-laws.

3. OTHER ISSUES

3.1 Articles or by-laws

3.2 Self-Perpetuating Board

3.1 Articles or by-laws

Background

The CA establishes the power of directors to pass articles or by-laws on a prescribed list of issues, which must be confirmed by members in order to be effective. Articles or by-laws are an important part of a corporation's constituting documents but are a complex task for many not-for-profits. Many find it necessary to engage legal counsel just to set up these basic operating principles for their organization, which undermines the very spirit of the modernizations initiative.

The Task Force recommends that the Act serve as a model default "code" in minimizing the need for articles or by-laws except where an organization deems it important to put exceptional alternate practices into place.

The Task Force also recommends that standard articles or by-laws, including templates and drafting tips, be made readily available through Ministry Websites and related macro communications tools. The Task Force prefer not to provide sample by-laws in the regulations as these "samples" will tend to become too standardized and quickly out of date. It is preferable to publish them as options in more flexible communications vehicles and update them regularly, with helpful tips, FAQs and related user-friendly information.

Q. Should standard, default articles or by-laws be included in the reformed Act?

The Task Force favours Option A – no standard default articles or by-laws should be included in the Act. Rather, templates and sample articles or by-laws should may be posted on Ministry Websites and incorporated into related macro communications tools.

3.2 Self-Perpetuating Board

Q1. Should the reformed Act prevent the possibility of self-perpetuating boards?

The Task Force recommends Option A – allow for self-perpetuating boards in the statute as the default provision, subject to the corporation's articles or by-laws.

Under the CA, there must be at least three members in a not-for-profit corporation (there must also be at least three directors and directors must be members). Because members elect directors, in the case of corporations that have only three directors and no other members, the board of directors is self-perpetuating, that is, it continues to elect itself. A self-perpetuating board may be less accountable or transparent than more other boards. However, they meet the needs of many small community nonprofits and should be preserved as the statutory minimum that may be amplified through additional directors in the by laws.

Q2. Should the reformed Act impose a requirement that all not-for-profit corporations have a minimum number of members who are not directors (that is, prevent the possibility of a self-perpetuating board)?

The Task Force does not recommend limitations on self-perpetuating boards as a matter of law. Organizations may preclude a self-perpetuating board in their articles or by-laws but that there should be no statutory prohibition.

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.

This Submission brings forward numerous recommendations in response to four issues -- membership, corporate finance, articles or by-laws and self-perpetuating boards -- raised in the Government's third Consultation Paper. These issues tend to raise important distinct between business and not-for-profit corporations and therefore the Task Force has called for a number of provisions that will distinguish a new "Not-for-Profit Corporations Act" from the *Ontario Business Corporations Act*.

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 community 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 important modernization exercise.

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.

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.

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.

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