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# Enhancing the ONCA Transition for Ontario non-profit corporations that are registered charities by reducing redundant regulatory review

Posted on February 13, 2015 by markblumberg

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There are over 50,000 Ontario non-profit corporations under the Ontario Corporations Act. There is concern and trepidation in the non-profit sector in light of the new Ontario Not-for-Profit Corporations Act ("ONCA"), which was initially passed in 2010 but is still not been proclaimed. It is still not known when ONCA will come into effect but it will not be earlier than 2016, although it may be mid-2016 or 2017.

The uncertainty and delays in ONCA coming into force has been unnecessarily difficult and a time consuming distraction for Ontario non-profits. We want to suggest a relatively simple change in process that could make the transition much easier for many Ontario non-profit corporations that are registered charities, which is probably about half of the Ontario non-profits that are currently active. It will save the Ontario government resources and help Ontario charities.

Ontario non-profits that are considered by the Ontario Public Guardian and Trustees Charitable Property Program (“PGT”) to be “charities” and also registered charities with the Charities Directorate of CRA (“CRA”) have the most difficult time when changing their corporate documents because when making relatively straightforward corporate changes they have to deal with three different regulators (PGT, The Ministry of Government and Consumer Services (“MGCS), and CRA).

The PGT currently reviews for Ontario non-profit corporations that are “charitable”, in addition to MGCS,

- 1) letters patent with objects that are not pre-approved objects;
- 2) supplementary letters patent except when only there is a name change; and
- 3) applications for amalgamation, continuance and dissolution of Ontario non-profits.

With ONCA coming into force the role of the PGT will be slightly reduced when it comes to corporate documents for non-profits. It is proposed by the Ontario government that the PGT will not review articles of incorporation under ONCA whether pre-approved or other customized objects are used, however the PGT will continue to review other corporate documents involving charities as outlined in points 2 and 3 above.

While the removal of point 1 is a welcome change, we suggest that the Ontario government exempt Ontario non-profit corporations that are registered charities under the Income Tax Act (Canada) from PGT review of corporate documents contained in point 2 and 3 above.

A Federal non-profit corporation that is a charity or registered charity operating in Ontario has no such requirement to obtain approval of the PGT and no other province seems to have such a requirement.

The Charities Directorate of the CRA has a vigorous and time-consuming process to review proposed new objects and activities. Having Ontario non-profit corporations undergo another review process from another charity regulator is time consuming, costly and an unnecessary duplication.

With ONCA coming into effect in the next year or so, Ontario registered charities may decide to make several corporate changes to update their governance structure and to become compliant with ONCA. In order to make these changes, these Ontario registered charities may be required to seek approval from both the CRA and the PGT.

It is also questionable whether the PGT will be able to handle all the requests to review corporate changes from Ontario registered charities during the ONCA transition period in an efficient and effective manner. Presently, it can take the PGT several months to review corporate changes and one can only presume that this timeline will increase with more requests.

The additional oversight by the PGT for most corporate changes may encourage some Ontario registered charities to skip the ONCA transition and instead move to Federal jurisdiction under the Canada Not-for-profit Corporations Act ("CNCA"). By continuing to the CNCA it will eliminate the additional time and expense associated with seeking approval from the PGT for corporate changes in the future. Also currently the CNCA provides greater certainty than ONCA since the CNCA has been in force since 2011 while ONCA is yet to be proclaimed and there is uncertainty as to the content of the regulations etc.

We recognize the important role that the PGT can play in Ontario's charitable sector. However, we do not think that PGT's review of corporate changes made by Ontario non-profit corporations that are registered charities is an efficient use of the PGT's limited resources since these corporate changes are already subject to CRA's vigorous examination and guidance. The PGT should improve public trust in the charitable sector by focusing on preventing fraud and abuse in relation to charitable property in Ontario. If an Ontario "charity" is not a registered charity with the CRA then we are not suggesting that there needs to be any change in procedures.

Thank you for your consideration, Mark Blumberg ([mark@blumbergs.ca](mailto:mark@blumbergs.ca))  
(<mailto:mark@blumbergs.ca>)

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