

Greetings from Ontario, Canada.

By the time you read this article you will know whether it will be President Obama, or President Romney in the White House. It will not be smooth sailing for either. I hope there are a few life boats available on the US economic Titanic.

And, again assuming we all get by December 21, it is time to do some planning for the future. One area I am frequently asked to assist with and give advice on is the area of not-for-profit associations. Most Ontario shooting clubs and organizations are incorporated under the (Ontario) Corporations Act.

The legal entity is created by a document called "Letters Patent" and any changes to this document are called "Supplementary Letters Patent".

Once a non-profit corporation comes into existence under the current law, it is important to have a constitutional by-law (also referred to as an "Organizational By-law"). It is under this by-law that the not-for-profit corporation sets out important information and procedures such as - types of membership, eligibility for membership, the number of directors, who is eligible to be a director, their responsibilities, election process, etc., etc. From my experience some not-for-profit corporations don't even have a constitutional by-law, most that do have provisions that are poorly drafted, arguably illegal or unenforceable in many respects and in almost every other case there are ambiguous or contradictory or missing provisions. There is little consistency between one not-for-profit corporation and others. Sometimes it would be necessary to retain a "Philadelphia" lawyer to try and make sense of the nonsense. Most not-for-profit corporations limp by year after year until a problem surfaces and then it is almost anybody's guess what legal rights and remedies exist.

Directors are exposed to potential liability. It is often difficult to ascertain basic things such as who are "members". It can be a nightmare.

I have been advising not-for-profit corporations that I represent to consider holding off major overhauls of their operational/constitutional by-laws if possible as a partial legislative "fix" (a brand new statute) is in the works.

The Ontario Not-for-Profit Corporations Act, 2010 received Royal Assent on October 10, 2010 and was targeted for proclamation for January 1, 2013. This proclamation date has been delayed to July 1, 2013 to (apparently) allow more time for a smoother transition.

The new proposed legislation in my opinion is long overdue and will bring predictability and certainly uniformity to the governance of not for profit organizations.

Here are just a few of the areas covered by the new legislation:

- simplify the incorporation process
 - the new Act will reduce the time it takes to incorporate and will allow for

electronic incorporation

- improve corporate governance and accountability
 - it will provide a statutory duty of care for directors, which holds them to a higher standard to act in good faith and in the best interests of the organization
- provide more rights for members
 - members will have more remedies if they believe directors are not acting in the best interests of the corporation
 - members will have greater access to financial records
 - if disciplinary action is being considered against a member, the member will have the right to be given notice with reasons and the right to be heard
- clarify that not-for-profit corporations are allowed to engage in commercial activities where the profits are reinvested in support of the corporation's not-for-profit purposes
- provide a simpler financial review process in place of an audit in specified circumstances
- align with modern legislation in other Canadian jurisdictions such as the Canada Not-for-Profit Corporations Act, which received Royal Assent on June 23, 2009
- default provisions. If the directors do not pass an organization by-law within 60 days after the date of incorporation, the corporation is deemed to have passed the standard organizational by-laws approved by the Director (The Director is supposed to have these "standard" organizational by-laws published in the Ontario Gazette and make them publicly available). [at the time this article was written originally in October, 2012, it appears no such by-laws have been published]. Corporations subject to the "default" organizational by-law may amend or repeal and replace them at any time.

There is a transitional provision that deals with existing not for profit corporations. Any provision in a corporation's letters patent, supplementary letters patent, by-laws or special resolutions as long as it was valid immediately before the (transitional) section comes into force - if it has not been amended to bring it into conformity with the new Act, then it is deemed to be amended on the third anniversary of the day the section comes into force to the extent necessary to bring any provision into conformity with the Act.

Comment: Bottom line - not-for-profit corporations will have an opportunity to clean up their constating documents or they will be cleaned up for them.

Hope this overview will help.

Paul Shaw, Ontario ATA Delegate