

## **Chapter 7**

### **Not-for-profit and Charity Incorporation in Ontario**

The following is taken from the Province of Ontario's web site.

#### **7.0 Annual Meeting**

An annual meeting must be held not later than eighteen months after incorporation and subsequently not more than fifteen months after the holding of the last annual meeting.

#### **7.1 Election of Directors and Officers**

Usually the directors are elected annually at the general meeting, by the members of the corporation. Directors in office at the time are retired and, if eligible, may seek re-election to resume office for another year. Generally directors are elected by members. Officers are appointed by the board of directors.

#### **7.2 Quorum for Meetings**

The quorum for meetings of directors is a majority, unless otherwise provided for in the Letters Patent, Supplementary Letters Patent or in a special resolution of the corporation, and in any event shall not be less than two-fifths of the board of directors.

#### **7.3 Reporting Requirements**

Within 60 days of incorporation you are required to file an Initial Return. Subsequently, within 15 days after any change that takes place in the information set out in the Initial Return, you must file a Notice of Change.

#### **7.4 Special Information Notice**

Periodically special information notices under section 6 of the Corporations Information Act are mailed out to all Ontario non-profit corporations on record with the Companies Branch. When your corporation receives this document, it is essential that it be completed and returned to the Branch within thirty days. The special information notice must be filed whether or not the corporation has recently filed an Initial Return or Notice of Change. Failure to file the special information notice may result in cancellation of the charter and the dissolution of the corporation.

#### **7.5 Penalties for Failure to Comply with Filing Requirements**

The importance of submitting these filings cannot be over-emphasized. Failure to comply may lead to cancellation of the Letters Patent and dissolution of the corporation. Penalties are provided in the Corporations Information Act for individuals (up to \$2,000) and for corporations (up to \$25,000) where reporting requirements are not complied with. Also, a corporation that is in default of the reporting requirements is not capable of maintaining any action in any court in Ontario in respect of any contracts made by the corporation.

#### **7.6 Audit Provisions**

Members of the corporation must appoint an auditor to hold office until the first annual meeting and at each annual meeting must appoint one or more auditors to hold office until the next annual meeting. There is no waiving of this statutory requirement.

## **7.7 Record Keeping Requirements**

A not-for-profit corporation is required, among other things, to meet certain record keeping obligations such as:

- Proper books of account and accounting records
- Minutes of meetings of members and directors
- Maintain copies of Letters Patent, Supplementary Letters Patent, By-Laws and Special Resolutions
- Register of its members and directors

## **7.8 Use of Corporate Name**

The name of a corporation is set out in the instrument of incorporation (Letters Patent) or if subsequently changed, in the instrument of amendment (Supplementary Letters Patent) and that is the name that the corporation must use in all transactions. For example, if the name of the corporation is The Muskoka and Haliburton Naturalists Inc., it may not identify itself as Muskoka and Haliburton Naturalists.

## **7.9 Changing Corporate Name**

A corporation may apply for Supplementary Letters Patent to change its corporate name.

## **7.10 Use of a Name Other than Corporate Name**

A corporation may use a name other than its corporate name. For example, a corporation called Federation of Ontario Moose Callers may carry on its undertaking under the assumed name "Ontario Moose Callers". However, NO corporation shall carry on business in Ontario or identify itself to the Ontario public by a name other than its corporate name unless the assumed name is first registered with the Companies Branch. A corporation which has registered and uses a name other than its corporate name is required to set out its corporate name on all contracts, invoices, negotiable instruments and orders for goods and services.

## **7.11 Changing the Authorized Number of Directors**

- a) The number of directors of a corporation is established at the time of incorporation, being the number of first directors named in the Letters Patent. The board of directors of a corporation shall consist of a fixed number of directors not fewer than three. A corporation may by special resolution increase or decrease the number of its directors.
- b) "Special Resolution" means a resolution passed by the directors and confirmed with or without variation by at least two-thirds of the votes cast at a general meeting of the members of the corporation duly called for that purpose or in lieu of such confirmation by the consent in writing of all the members entitled to vote at such a meeting. A notice of such special resolution must be filed with the Companies Branch and published by the corporation in the Ontario Gazette within 14 days after the resolution has been passed.

## **7.12 Changing the Location of the Head Office**

- a) The location of the head office is established in the Letters Patent. However, a corporation

may by special resolution change the location of its head office to another place in Ontario.

b) "Special Resolution" means a resolution passed by the directors and confirmed with or without variation by at least two-thirds of the votes cast at a general meeting of the members of the corporation duly called for that purpose or in lieu of such confirmation by the consent in writing of all the members entitled to vote at such a meeting. A notice of such special resolution must be filed with the Companies Branch and published by the corporation in the Ontario Gazette within 14 days after the resolution has been passed.

### **7.13 Changing the Objects and Special Provisions**

a) A corporation may apply for Supplementary Letters Patent to change all or any of its objects and/or special provisions set out in the Letters Patent. If the corporation is, or after issuance of Supplementary Letters Patent, would be funded, supervised, etc. by a Government Agency or Ministry, it may be wise to consult with the funding or supervising Agency or Ministry prior to completing the application for Supplementary Letters Patent.

b) Applicants for Supplementary Letters Patent should also bear in mind that, in addition to the Corporations Act, there may be other legislation to which the corporation may be subject.

### **7.14 Income Tax Act Considerations**

A not-for-profit corporation is generally exempt from federal income tax.

### **7.15 Ontario Corporations Tax Branch Requirements**

a) Corporations, whether share or non-share, which are exempt from both income tax and capital tax, are not required to file annual Ontario Corporations Tax Returns (CT-23) with the Corporations Tax Branch.

b) Where a corporation loses its exempt status for a particular taxation year it would be required to file a return and pay the taxes for that year. It would also be required to file for each subsequent year if:

a) it had a taxable income for the year;

b) its total assets and/or gross revenue exceed \$1 million.

For corporations which have not lost their exempt status, the Branch may require that these corporations complete questionnaires from time to time to see if their tax status has changed.

### **7.16 Dissolution - Surrender of the Charter**

Where a corporation no longer serves the purpose for which it was incorporated or where the members have lost the interest in the corporation, it may be desirable for the members to terminate the existence of the corporation. The most straight forward method of dissolution is the surrender of the charter.