

## **COURT OF APPEAL UPDATE ON CORPORATE GOVERNANCE COMPLIANCE**

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### **A. INTRODUCTION**

This *Charity Law Bulletin* is a follow-up to *Charity Law Bulletin* No. 101 entitled *Non-Share Capital Corporations Must Adhere Strictly to Corporate Governance Procedures*, dated October 27, 2006.<sup>1</sup>

### **B. BACKGROUND**

*Rexdale Singh Sabha Religious Centre v. Chattha*,<sup>2</sup> a decision released by the Ontario Superior Court of Justice on January 24, 2006, related to a disagreement over the corporate governance procedures of three inter-related non-share capital corporations, including the process for adding new directors, issues concerning membership, and the failure to pass by-laws. The ruling covered a number of important issues pertaining to non-share capital corporations and illustrated that non-share capital corporations must adhere as strictly to corporate governance procedures as for-profit corporations. The three charitable organizations appealed the application judge's order to fix the membership of the three corporations as set out in an affidavit of one of the respondent directors, as well as to require the existing directors to convene a meeting within 30 days to elect new directors by means of a fair vote.

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<sup>1</sup> Carters Professional Corporation, online: <http://www.carters.ca/pub/bulletin/charity/2006/chylb101.pdf>.

<sup>2</sup> [2006] O.J. No. 328.

### C. ONTARIO COURT OF APPEAL DECISION

The Ontario Court of Appeal (the “Court”) decision was released on November 27, 2006, allowing the appeal.<sup>3</sup> Citing s. 297 of the *Corporations Act* (the “Act”),<sup>4</sup> the Court of Appeal noted that “upon incorporation, each applicant becomes a director and member of the corporation. The Act provides that persons may be admitted to membership thereafter by resolution of the Board of Directors.”<sup>5</sup> In the Court’s opinion, there had been a failure to properly change the members of the corporation in accordance with the Act, and that the application judge had incorrectly concluded that four of the five directors of Rexdale were permitted to have approved the creation of a list of new members. As a corrective measure, the Court held that the proper directors and members of the three corporations were the applicants for the letters patent of each corporation.

In addition, under s. 295(1) of the Act, there is a provision which states that one-tenth of the members “may request the directors to call a general meeting of the ... members for any purpose connected with the affairs of the corporation that is not inconsistent with this Act.”<sup>6</sup> Counsel for the appellants was satisfied that this requirement be by-passed and instead have the court order that a meeting be called and a date fixed for a “meeting of the members of each corporation as [the Court] was entitled to do under s. 297 of the Act.”<sup>7</sup> In that regard, the Court ordered that the meetings be held within 30 days.

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<sup>3</sup> [2006] O.J. No. 4698.

<sup>4</sup> R.S.O. 1990, c. C-38.

<sup>5</sup> *Supra* note 3 at para. 3.

<sup>6</sup> *Supra* note 4 at subsection 295(1).

<sup>7</sup> *Supra* note 3 at para. 6.

**D. COMMENTARY**

Although the Ontario Court of Appeal allowed the appeal in *Rexdale Singh Sabha Religious Centre v. Chattha*, both decisions demonstrate that it is essential that charitable and not-for-profit organizations comply with corporate governance procedures. This is important from the outset in connection with carefully drafted by-laws adopted on a timely basis, as well as with basic corporate compliance on a day-to-day basis. Adhering to the provisions of the applicable corporate statute will help to prevent disputes or at least ensure that those which arise are handled judiciously.