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# THE 2012 OBA INSTITUTE

Toronto – February 10, 2012

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## Digging for Dirt: Handling Requests for Information

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**Digging for Dirt: Handling Requests for Information**

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**OVERVIEW**

- Background
- Recordkeeping requirements for the corporation
- What rights do the directors have to information?
- What rights to members have to view, copy and use information?
- What information is available to the public?
- Privacy law considerations
- Publicly available reports

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**ACRONYMS**

- *Canada Not-for-Profit Corporations Act* ("CNCA")
- *Canada Corporations Act* ("CCA")
- *Canada Business Corporations Act* ("CBCA")
- *Ontario Not-for-Profit Corporations Act, 2010* ("ONCA")
- *Ontario Corporations Act* ("OCA")
- *Ontario Business Corporations Act* ("OBCA")

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**A. BACKGROUND**

- New not-for-profit (“NFP”) legislation is modeled on reformed for-profit legislation that was developed during the 1970s and 1980s – provides expanded recordkeeping obligations and rights to access records by certain individuals
- The *Canada Not-for-Profit Corporations Act* (“CNCA”), which will replace Part III of the *Canada Corporations Act* (“CCA”), was modeled on the *Canada Business Corporations Act* (“CBCA”)
- The *Ontario Not-for-Profit Corporations Act, 2010* (“ONCA”), which will replace Part II of the *Ontario Corporations Act* (“OCA”), was modeled on the *Ontario Business Corporations Act* (“OBCA”)

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**B. RECORD KEEPING REQUIREMENTS FOR THE CORPORATION**

1. Federal Corporations

- The CNCA requires the following records to be kept:
  - The articles, by-laws and any amendments to them
  - A copy of any unanimous member agreement
  - Meeting minutes for and resolutions of the members, the directors, and any committee of members or directors
  - If any debt obligation is issued by the corporation, a debt obligations register
  - Separate registers of directors, officers, and members
  - Financial statements-subsidary and body corporate
  - Accounting records

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2. Ontario Corporations

- The ONCA requires the following records to be kept:
  - The articles, by-laws and any amendments to them
  - Meeting minutes for and resolutions of the members, the directors, and any committee of members or directors
  - Separate register of directors, officers and members
  - Accounting records adequate to allow directors to ascertain the financial position of the corporation
  - The consents of directors to act as directors
  - Financial statements - subsidiary and body corporate the accounts of which are consolidated in the financial statements of the corporation

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### C. WHAT RIGHTS DO THE DIRECTORS HAVE TO INFORMATION?

1. Federal Corporations
  - The directors have the right to access all of the records that the corporation is required to keep under the CNCA
  - These records must be kept at registered office or any place that the directors think fit
  - Right to inspect these records at all reasonable times and to request extracts of them at no charge
  - Can compel a present or former public accountant to attend a meeting of members and answer questions relating to its duties

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2. Ontario Corporations
  - The directors have the right to access all the records that the corporation is required to keep under the ONCA
  - The directors' right to access records under the ONCA is similar to that under the CNCA
  - These records must be kept at registered office or any place designated by the directors
  - Right to inspect these records during regular business hours and to request free extracts of them
  - Can compel a present or former auditor to attend a meeting of members and answer questions relating to its duties
    - No equivalent provision in OCA

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### D. WHAT RIGHTS DO MEMBERS HAVE TO VIEW, COPY AND USE RECORDS?

1. Federal Corporations
  - Right to examine the following records during usual business hours, and take extracts for a fee:
    - The articles, by-laws, and amendments to them
    - A copy of any unanimous member agreement
    - The minutes of meetings of the members and any committee of members
    - The resolutions of the members and any committee of members
    - The register of directors
    - The register of officers

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- Financial statements of each of the corporation's subsidiaries and of each body corporate the accounts of which are consolidated in the financial statements of the corporation
- Free copies of the following records are available upon request:
  - The articles, by-laws and amendments to them
  - A copy of any unanimous member agreement
  - The financial statements discussed above
- May examine the register of members and register of debt obligations or obtain a list of members if satisfy statutory requirements

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2. Ontario Corporations

- Right to examine the following records during regular office hours, and take extracts for a fee:
  - The articles, by-laws, and amendments to them
  - The minutes of meetings of the members and any committees of members
  - The resolutions of the members and any committee of members
  - The register of directors
  - The register of officers
  - The consents of directors to act as directors

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- A copy of financial statements of each of the corporation's subsidiaries and of each body corporate the accounts of which are consolidated in the financial statements of the corporation
- Free copies of the following records are available upon request:
  - The articles, by-laws and amendments to them
  - The financial statements discussed above
- May examine the register of members and register of debt obligations or obtain a list of members if satisfies statutory requirements

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**E. WHAT INFORMATION IS AVAILABLE TO THE PUBLIC?**

1. Federal Corporations

- No provisions under federal legislation that permits members of general public to access corporate records
- However, the creditors of CNCA corporations may examine and pay to take extracts of:
  - Articles, by-laws and amendments to them
  - A copy of any unanimous member or shareholder agreement
  - If any debt obligation is issued by a CNCA corporation, a debt obligation, or in the case of a CBCA corporation a securities register

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- Meeting minutes of any committee of members
- Resolutions of members and any committee of members
- Register of directors
- Register of officers

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2. Ontario Corporations

- Only the OCA permits members of general public to access corporate records – obtain a list of members
- However, creditors of OCA and ONCA corporations may examine and pay to take extracts of:
  - Articles and any amendments to them (ONCA), or letters patent, supplementary letters patent and memorandum of agreement, if any, or, if incorporated by Special Act, a copy of the Act (OCA)
  - The by-laws and any amendments to them
  - Meeting minutes and any committee of members
  - The register of directors
  - The register of members

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- Additional records permitted by ONCA:
  - Meeting minutes of the directors and of any committee of directors
  - Resolutions of the directors, the members and any committees of directors or members
  - Resolutions of the directors and of any committee of directors
  - The register of officers
  - The consents of directors to act as directors
- Additional records permitted by OCA:
  - Special resolutions of the corporation
  - List of members (as discussed above)

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3. Corporations Information Act

- Copies of the following filings are accessible to the public for a fee:
  - Initial return of the corporation
  - Annual return of the corporation
  - Notice of change for every change in information that is required to be filed under the CIA
  - Any special filing required by the Minister
  - Any return or notice for any of the above matters requested by the Minister to be filed

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**F. PRIVACY LAW CONSIDERATIONS**

1. Personal Information Protection and Electronic Documents Act ("PIPEDA")

- Private sector provisions apply to "personal information":
  - a) That an organization that collects, uses or discloses the course of "commercial activities" or
  - b) Is about an employee of the organization and that the organization collects, uses or discloses in connection with the operation of a "federal work, undertaking or business"
- Personal information may be used or disclosed without knowledge or consent, if it was collected for the purpose of making a disclosure required by law or if the disclosure is required by law, respectively

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**G. PUBLICLY AVAILABLE REPORTS**

1. Federal Corporations
  - Search for a Federal Corporation
  - Certificate of Compliance
  - Certificate of Existence
  - Certificate of Incorporation
  - Articles of Incorporation
  - Notices Filed

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2. Ontario Corporations
  - Point-In-Time Report
  - Profile Report
  - Document List
  - List of Business Names Registered by a Corporation
  - Certificate of Status
  - Certificate or Statement of No Record
  - Certificate of Non-Filing
  - Copy of Return/Notice
  - TC or RC Files
  - Microfiche

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