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

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")
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")

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 - subsidiary and body corporate
  - Accounting records

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
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

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

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
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

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

• 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
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

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
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
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

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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