

 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>The 2022 Ottawa Region <i>Charity & Not-for-Profit Law</i> Seminar February 17, 2022</p>
<p>Financial Reporting and Audit Requirements for Charities and NPOs</p> <p>By Ryan M. Prendergast, B.A., LL.B.</p> <p>rmp@carters.ca 1-877-942-0001</p> <p>© 2022 Carters Professional Corporation</p>	
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<p>OVERVIEW</p> <ul style="list-style-type: none">Common Issues with Financial ReportingFinancial Reporting Requirements under the CNCA/ONCAUnique Issues for Charities/NPOsKey Takeaways <p>www.charitylaw.ca www.carters.ca</p>	

A. COMMON ISSUES WITH FINANCIAL REPORTING

- Audits are too expensive – we never do it
- Our financial statements are always available after the AGM
- Our bookkeeper has been preparing our financial statements for years
- Our audit committee approves the financial statements, our board has nothing to do with it
- CRA doesn't ask for audited financial statements with our T3010 so we don't prepare them
- We prepare two sets of financials so our funder is unaware of surpluses from other programs

B. FINANCIAL REPORTING REQUIREMENTS UNDER THE CNCA/ONCA

- The balance of this presentation reviews financial reporting issues for incorporated registered charities and non-profit organizations ("NPOs") in Ontario or federally
 - Registered charities and NPOs established in other jurisdictions will want to note any differences applicable to where they are incorporated
- Registered charities or NPOs established as unincorporated associations or trusts may require separate advice
- This presentation does not deal with books and records requirements under the *Income Tax Act* (Canada) or statutory rights to information for incorporated registered charities or NPOs

- There is often confusion concerning whether registered charities or NPOs need to appoint an auditor, need financial statements, or whether they need to be subject to an audit or not
- For incorporated registered charities and NPOs, whether the entity needs to appoint a public accountant/auditor and the level of financial review concerning the financial statements to be provided to their membership is a **legal issue** and not an accounting issue
- Both the *Canada Not-for-profit Corporations Act* (“CNCA”) and the *Not-for-profit Corporations Act, 2010* (Ontario) (“ONCA”) require similar rules, with some differences as will be discussed

1. What Do We Mean When We Refer to a Public Accountant/Auditor?

- The CNCA requires the appointment of a “public accountant”
- The ONCA requires the appointment of an “auditor”
- For the purposes of the CNCA, this means they must be a member in good standing of an institute or association of accountants of a province, and meet any qualifications under any enactment in a province to be able to conduct an audit engagement or review engagement
 - In Ontario this means permitted to conduct an audit or review engagement of the corporation under the *Public Accounting Act, 2004*
- They must also be “independent”

- Auditor/public accountant has the right to attend every meeting of the members at the expense of the corporation and to be heard on matters relating to the their duties
- A director or member, including non-voting members, can give notice to the public accountant/auditor or **former** public accountant/auditor to attend at a meeting at the expense of the corporation and answer questions relating to their duties
- The public accountant/auditor has the authority under both the ONCA and CNCA to demand from current and **former** directors, officers, employees access to the information they need in order to conduct an audit or review engagement

2. Audit, Review Engagement, Compilation – What's the Difference?

- Audit
 - An audit engagement is the process of engaging an independent public accountant to examine the accounting records and other evidence supporting the financial statements; to prepare financial statements; and to render a professional opinion that the financial statements present a fair picture of the organization's financial position and its activities during the period in which the audit was carried out
- For more details see link to Corporations Canada glossary <https://www.ic.gc.ca>

- Review Engagement

- If an audit is not mandatory, financial statements may be prepared through a review engagement. A review engagement is the process of engaging an independent public accountant to prepare financial statements on a review basis. The accountant will not express an opinion on the fairness of the financial statements, but will only provide a limited assurance that the financial information is plausible and conforms to generally accepted accounting principles

- Compilation

- Compilation is the process by which unaudited financial information is compiled to produce financial statements that are based on information provided by the organization. A compilation does not provide any assurances as to the accuracy or veracity of the financial statements since there has been no audit or review engagement done

- Neither the CNCA or ONCA mandate a compilation

3. When Do We Have to Appoint a Public Accountant/Auditor? What Do They Have to Do?

- CNCA

Type of Corporation (Gross Annual Revenues)			Appointment of Public Accountant (PA)	Review Engagement or Audit
Soliciting	Designated	\$50,000 or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only)
	Non-Designated	More than \$50,000 and up to \$250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit, but members can pass a special resolution to require a review engagement instead
	Non-Designated	more than \$250,000	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.
Non-Soliciting	Designated	\$1 million or less	Members must appoint a PA by ordinary resolution at each annual meeting. Exception – Members may waive appointment by annual unanimous resolution	PA must conduct review engagement, but members may pass an ordinary resolution to require an audit instead. (If no PA is appointed, then compilation only)
	Non-Designated	more than \$1 million	Members must appoint a PA by ordinary resolution at each annual meeting	PA must conduct an audit.

- ONCA

Type of Corp/Gross Annual Revenues	Requirements for an Auditor	Audit/Review Engagement	
Public benefit corporation	\$100,000 or less	May, by extraordinary resolution (80 per cent), decide not to appoint an auditor	May dispense with both an audit and a review engagement by extraordinary resolution (80 per cent)
	More than \$100,000 and less than \$500,000	May dispense with an auditor and have someone else conduct a review engagement. This dispensation requires an extraordinary resolution (80 per cent)	May elect to have a review engagement instead of an audit by extraordinary resolution (80 per cent)
	\$500,000 or more	An auditor must be appointed annually	Audit is required
Non- public benefit corporation	\$500,000 or less in annual revenue	May, by extraordinary resolution (80 per cent), dispense with an auditor	May dispense with both an audit and a review engagement by extraordinary resolution (80 per cent)
	More than \$500,000 in annual revenue	May, by extraordinary resolution (80 per cent), dispense with an auditor, and instead appoint a person to conduct a review engagement	May elect to have a review engagement instead of an audit by extraordinary resolution (80 per cent)

- What is soliciting/non-soliciting under the CNCA?

- 3 year rolling status and what would be included in the \$10,000 threshold

- CNCA requires that all corporations categorized into soliciting and non-soliciting corporations

- If a corporation receives more than \$10,000 in its last financial period from public sources, it will become a soliciting corporation
- 3 year status - from the AGM in the following financial year until the 3rd AGM

- Public sources
 - (a) Requests for donations or gifts from persons who are not
 - Members, directors, officers, or employees of the corporation at the time of the request
 - Legal or common law spouse of the above persons
 - Children, parents, brothers, sisters, grandparents, uncles, aunts, nephews or nieces of the above persons
 - (b) Grants or other similar financial assistance received from the federal or a provincial or a municipal government, or agencies of such government
 - (c) Donations or gifts received from a soliciting corporation

- What is public benefit/non-public benefit corporation under the ONCA?
 - PBC is defined as:
 - (a) A charitable corporation; or
 - (b) A non-charitable corporation that receives more than \$10,000 or other prescribed amount in a financial year,
 - (i) In the form of donations or gifts from persons who are not members, directors, officers or employees of the corporation; or
 - (ii) In the form of grants or similar financial assistance from the federal government or a provincial or municipal government or an agency of any such government

- Charitable corporations will always be PBCs, regardless of the amount or source of their revenue
- Non-charitable corporations will only be PBCs if they meet the criteria set out in the ONCA
 - Receives more than \$10k from:
 - In gifts or donations from persons not connected to the NFP; or
 - In grants or financial assistance from government
- The definition of PBC turns on the meaning of “charitable corporation”, which is defined in section 1(1) of the ONCA as a corporation incorporated for the relief of poverty, advancement of education, advancement of religion, or other charitable purposes

4. Who Appoints the Auditor/Public Accountant?

- Generally, the appointment, removal, and determination of remuneration is done by the **corporate members**, *not* the board
- Under sections 181 of the CNCA and 68 of the ONCA, the auditor/public accountant is appointed at each annual meeting by the members
 - If no appointment occurs, the incumbent auditor remains until a successor is appointed
- Their remuneration is fixed by the members, unless the resolution permits the board to do so
- Note that a court can also appoint an auditor/public accountant

5. Who Approves the Financial Statements?

- The financial statements are approved by the board of directors, not the audit/finance committee or another committee of the board
 - Section 83 of the ONCA and 178 of the CNCA require the board to approve the financial statements, and the approval must be evidenced by the signature of one or more directors of the board
 - Financial statements should not be circulated under either the ONCA or CNCA unless they are signed by one or more board members and include the report of the public accountant/auditor

6. What If We Have an Audit Committee?

- Section 194 of the CNCA and section 80 of the ONCA permit not-for-profit corporations to establish an audit committee
 - Under the CNCA, the committee must be made up of not less than three directors, a majority of whom are not officers or employees
 - Under the ONCA, directors do not have to be on the audit committee but a majority of the committee cannot be officers or employees of the corporation
- The duty of the audit committee is to review the financial statements before the board approves them
- The public accountant/auditor is entitled to attend any meeting of the audit committee and can call meetings of the audit committee

7. What is Presented to the Members and How?

- At every annual meeting, the board is obligated to “place before the members”:
 - The financial statements;
 - The report of the auditor/public accountant; and
 - Any further information respecting the financial position of the corporation and the results of its operations required by the articles or the by-laws (or any unanimous member agreement in the case of the CNCA)

- What about before the annual meeting?
 - Under the CNCA, between 21 to 60 days before an AGM a corporation must send a copy or summary of financial information or a copy of a publication of the corporation reproducing the information contained in the documents or summary **to each member**, other than a member who, **in writing**, declines to receive such documentation.
 - A corporation that sends a summary to a member shall also inform that member of the procedure for obtaining a copy of the documents free of charge
 - Alternatively, if the by-laws permit, give members notice that the documents are available at the registered office of the corporation and that any member may, on request, obtain a copy free of charge at the office or by prepaid mail

- Under the ONCA, not less than 21 days, or a prescribed number of days (5 days), before each AGM, a corporation must give a copy of the financial statements, auditors report, and anything else required, to all members **who have informed the corporation that they wish to receive a copy**
- As such, the default is the corporation does not need to circulate financial statements to members unless they opt-in, unlike the CNCA which requires an opt-out
- Note 21 days under the ONCA is distinct from the default notice of meeting period of 10 to 50 days

8. Who Else Gets the Financial Statements?

- Under the CNCA, soliciting corporations must file their financial statements, the report of the public accountant, if any, and any further information required with Corporations Canada
 - The filing must be done annually not less than 21 days before AGM
- Note that these are public and can be requested online through the Corporations Canada website
- The “Director” under the CNCA can also request copies of the same
- The ONCA **does not** require financial statements to be filed with anyone
- Note financial statements must also be included with T3010 or T2

9. Audited Financial Statements and Review Engagements are So Expensive! What Good are They?

- Provide the required financial disclosure to members and the public in the case of registered charities, or those that are soliciting corporations/public benefit corporations that are not registered charities
- Both the ONCA and CNCA provide a reasonable diligence defense for directors that rely on the financial statements presented by an officer or by the public accountant/auditor

C. UNIQUE ISSUES FOR CHARITIES/NPOS

1. Financial Review Requirements for CRA

- CRA is not the authority concerning financial review for incorporated charities
 - CRA recommends that if a charity has income over \$250,000 the financial statements be professionally audited
 - CRA suggests that the charity's treasurer should sign any financial statements that have not been professionally prepared
 - Under the Income Tax Act (Canada), CRA can suspend receiving privileges or revoke status of registered charities that fail to file a complete and accurate T3010, which may include whether the financial statements have inaccuracies

2. Issues for Ontario Charities

- O. Reg. 4/01 of the *Charities Accounting Act* (Ontario) provides a limited exception to the common law prohibition against directors of charitable corporations receiving any direct or indirect remuneration
- Where this exception applies and a director receives compensation from the charity, O. Reg. 4/01 requires that the directors ensure that information respecting payments made in a given year is noted in the corporation's financial statements for that year, and placed before its members at an annual meeting of the members

- PGT guidelines state that:
 - The information should appear in the notes to the financial statements;
 - The director in question should be named;
 - If someone connected to a director contracts with the charitable corporation, it is not necessary to name the connected person, i.e., the notes could say, a party connected to the named director;
 - The nature of the business transaction should be mentioned in broad terms, i.e., whether it is for a good, service, or facility that was provided; and
 - It is not necessary to specify the amount paid to the director or the connected person
 - See <https://www.publications.gov.on.ca>

3. NPO Filing Requirements

- NPOs that are incorporated are required to file a T2 information return with CRA
- This includes financial statement information and any notes to the financial statements and the report of the auditor/public accountant, if they were prepared
- Some NPOs may be required to file a T1044 NPO information return if:
 - It received or is entitled to receive taxable dividends, interest, rentals or royalties totaling more than \$10,000 in the fiscal period
 - It owned assets valued at more than \$200,000 at the end of the immediately preceding fiscal period
 - It had to file an NPO information return for a previous fiscal period

D. KEY TAKEAWAYS

- Financial statements are used not only by members and regulators, but even third-parties, e.g., Charity Intelligence, etc., to evaluate registered charities or NPOs
- Financial statements also required by grant making organizations, and audited financial statements may be necessary to apply for grants
- Members and directors have statutory rights to financial information that directors cannot ignore
- Properly prepared financial statements are not the work of lawyers, but, it is important to be aware of the legal requirements under the ONCA and CNCA with respect to the public accountant/auditor and their legal duties

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