Key updates on Canadian college education and ONCA legislation

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There has been substantial change in the higher education sector over the past several months. To help navigate the changing education landscape, we have summarized the key updates that colleges need to know.

Amendments to the *Ontario Not-for-Profit Corporations Act, 2010*

As covered in our September 2023 article, on Oct.1, 2023, the Ontario *Not-for-Profit Corporations Act, 2010* (ONCA) was amended by Bill 91, *Less Red Tape, Stronger Economy Act, 2023* to incorporate the following updates relevant to colleges:

Virtual meeting provisions

- Meetings of governors may be held entirely by virtual means or by any combination of in-person attendance and virtual means. However, the by-laws of the college may limit how such meetings may be held and may specify other requirements.
- A notice of a meeting of governors is not required to specify a place of the meeting if it is to be held entirely by virtual means.
- Where a person may attend a meeting of governors by virtual means, the notice must include instructions for attending and participating and, if applicable, voting by such means.
- Notice of a meeting that continues an adjourned meeting of governors is not required to be given if all of the following are announced at the time of adjournment:
    - The time of the continued meeting;
    - If applicable, the place of the continued meeting;
    - If applicable, instructions for attending and participating in the continued meeting by virtual means that will be made available for the meeting, including, if applicable, instructions for voting by such virtual means at the meeting.

- Meetings of governors held virtually must allow for all persons attending the meeting to be able to communicate with each other simultaneously and instantaneously.

Audit committee composition

While it is not mandatory to have an audit committee, if the college does have an audit committee (*i.e.*, a committee that reviews the financial statements of the college), the ONCA now provides that the committee must be comprised of one or more governors. It is not clear whether this will be interpreted to mean the committee must be comprised solely of governors or have at least one governor. The most prudent approach is to have an audit committee comprised of solely governors.

Corporate records

All registers and other records required by ONCA or the regulations to be prepared and maintained by the college (*i.e.*, governor consents to serve) may be in any form, if they are capable of being reproduced in an accurate an intelligible form within a reasonable time.

Amendments to the conflict of interest policy directive

In October 2023, the Minister of Colleges and Universities (Minister) updated the conflict of interest policy directive for colleges of applied arts and technology (Conflict of Interest Policy Directive), issued pursuant to its authority under the *Ontario Colleges of Applied Arts and Technology Act, 2002* (OCAATA). The update includes the following requirements:

- Each governor must complete an annual Conflict of Interest Declaration form, which is to be reviewed by the chair of the board; and
- A board chair must submit an annual attestation to the ministry to confirm the board's compliance with the conflict of interest policy directive.

Amendments to the *Ministry of Training, Colleges and Universities Act* re new policies

On Feb. 26, 2024, the Minister tabled Bill 166, *Strengthening Accountability and Student Supports Act, 2024*.

New policies for colleges and universities

If passed, Bill 166 will amend the *Ministry of Training, Colleges and Universities Act*, requiring every college of applied arts and technology and every publicly-assisted university to have:

- A student mental health policy that describes the programs, policies, services and supports available at the college or university in respect of student mental health; and

- Policies and rules to address and combat racism and hate, including but not limited to anti-Indigenous racism, anti-Black racism, antisemitism, and Islamophobia (together, the Policies).

Some additional details to note about the Policies include:

- The Minister will have the ability to issue directives to colleges and universities which specify topics to be addressed or items to be included in the Policies.
- These directives will set out a date for compliance and steps which would be undertaken in the event of non-compliance.
- The Policies must be published on the colleges and universities' websites and copies must be made available to those that request them.
- Colleges and universities must review the Policies at least once every five years and make any amendments as required. Note, in relation to the policies and rules regarding racism and hate, the review may be required to be conducted at an earlier date if set out as such by a directive.
- Colleges and universities must provide to their board of governors an annual report regarding the implementation and effectiveness of the Policies.

Directives regarding costs

Bill 166 will also empower the Minister to issue directives in relation to the information to be provided about the costs associated with attendance at the college or university. Among these costs include ancillary fees, the costs of textbooks and other learning materials. Notably, there are compliance and reporting obligations in relation to these directives.

Amendments to O. Reg. 34/03 under the OCAATA re chair term extensions

On March 1, 2024, O. Reg. 80/24 came into force, adding additional provisions to O. Reg 34/03 under the OCAATA. More specifically, the amendment provides that a board may determine by resolution that the standard six-year term limit for a member of a board of governors does not apply to a member who is serving as chair of the board (so long as the member continues to serve as chair). This means that a member who is a chair of the board could have an eight-year term limit.

Next steps for colleges

Colleges should review their governance documents – such as their by-laws and policies – to determine if any updates are required to comply with or reflect these amendments. Note that if you have not yet done a review of your by-laws for compliance with ONCA, there may be additional required changes to your by-laws, as well as a need to file articles of amendment.

Contact us

If you have any questions about these amendments, please reach out to any of the authors or key contacts listed below.

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