Ontario extends deadline for proclamation into force of the Not-for-Profit Corporations Act, 2010

September 25, 2020

The *Not-for-Profit Corporations Act, 2010* (ONCA) received royal assent on October 25, 2010 but has not yet been proclaimed into force. The ONCA aims to modernize the *Corporations Act* (Ontario) (OCA), which is the statute that has governed Ontario charities and not-for-profit corporations (Ontario CNFPs) since 1907. While proclamation of the ONCA has been delayed multiple times, amendments to the OCA to include some of the key provisions of the ONCA were passed in 2017 and 2018 (more information on these amendments can be found here).

Section 10.1(2) of the *Legislation Act*, *2006*, provides that any Act not proclaimed into force by a stated number of years after it is enacted will be repealed, unless a resolution is adopted that the Act not be repealed. The deadline for the ONCA is December 31, 2020. To ensure that the ONCA is not repealed, the Minister of Government and Consumer Services introduced a motion to extend the deadline to proclaim the ONCA into force until December 31, 2021 (Extension Motion). The Extension Motion was passed on September 21, 2020.

Importantly, the Extension Motion does not apply to certain provisions of the ONCA (Excluded Provisions), including section 105, subsections 111(3), and (4), subsection 116(3) and subsections 118(4) and (5), which were intended to grant members of a corporation (including non-voting members) the right to vote (including, in some instances, separately as a class) in connection with certain fundamental changes to the corporation, such as:

- changes to the conditions, rights or privileges attaching to the membership of the corporation;
- the amalgamation of the corporation with one or more other corporations;
- the continuance of the corporation under the laws of another jurisdiction; or
- the sale, lease or exchange of all or substantially all of the property of the corporation other than in the ordinary course of its activities.

In practice, this means the Excluded Provisions will not be part of the ONCA if it is proclaimed into force after December 31, 2020. We expect this will be welcome news for many Ontario CNFPs who did not anticipate that some classes of members,

particularly non-voting members, would have these types of corporate rights. Nonetheless, an Ontario CNFP governed by the ONCA would still have the option to include a version of some or all of the Excluded Provisions in its by-laws if it made sense to do so.

When the ONCA is proclaimed into force, it will replace the OCA and therefore require Ontario CNFPs, including share capital not-for-profits, to revise their constating documents, regardless of the date of such proclamation and whether the Excluded Provisions will be part of the ONCA. If this has not already been done, we recommend Ontario CNFPs start reviewing their constating documents now to be ready to implement any revision that may be required once the ONCA is proclaimed into force.

Should you have any questions, please email Victoria Prince, Nick Pasquino, Lydia Wakulowsky, Katherine Carre, Pierre Permingeat, Sylvie Lalonde, Alexey Belozorovich, Benjamin Fenech, any of the authors or key contacts listed below or any other member of our Charities & Not-For-Profit group.

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