



## **REVISING THE CORPORATIONS ACT**

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**“Modernization of the Legal Framework Governing  
Ontario Not-For-Profit Corporations”**

**Consultation Paper #1**

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**A Brief to the Sector from  
The Ontario Nonprofit Network’s  
Expert Working Group**

***January, 2008***

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## Introduction

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The *Ontario Corporations Act* is the legislation that governs how nonprofit organizations are incorporated and that sets out the framework for their corporate structure (directors, by-laws, etc.). The current act has not had a major revision for almost 50 years and badly needs updating. We are very grateful for the opportunity for the nonprofit sector to contribute to the development of modern legislation.

The world in which nonprofits operate today is very different from the world 50 years ago, and, as a result, nonprofit organizations themselves are very different. It is, therefore, very important that nonprofit organizations participate in any effort to modernize any legislation that affects them. However, participating in the somewhat technical exercise of developing new legislation is beyond the capacity of many nonprofit organizations. They have neither the time nor the legal expertise to focus on the legislative review. For this reason, the Ontario Nonprofit Network<sup>1</sup> has established an Expert Working Group composed of knowledgeable individuals from the nonprofit sector and of lawyers whose practice includes nonprofit organizations. The job of the Expert Working Group is to review the consultation documents, mull over the issues, and prepare concise and accessible briefs for the sector that so organizations with limited time and involvement can grasp the key issues and make their views known.

In preparing this brief, the Expert Working Group has reviewed the legislation and the proposed changes with a view to ensuring that the legislation:

- supports and encourages the development of responsive and transparent nonprofit organizations to serve the people of Ontario;
- does not unduly and unnecessarily add to the regulatory burden; and
- does not constrain or limit the ability of nonprofit organizations to accomplish their objectives and respond to a changing environment.

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<sup>1</sup> The Ontario Nonprofit Network is described in more detail on page 5. See Appendix A for a list of the members of the Expert Working Group.

## Recommendations at a Glance

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The first government consultation document, *Modernization of the Legal Framework Governing Ontario Not-for-Profit Corporations*, issued on May 7, 2007, sought feedback on the overall structure and framework of the new act. The following are the key principles that the Expert Working Group feels should underpin new corporate legislation for not-for-profit and charitable organizations that provide a public benefit to the people of Ontario.

1. **The revised act should focus exclusively on not-for-profit (NFP) incorporation.** While some not-for-profit corporations will also seek and obtain charitable status, the Corporations Act should not attempt any charitable regulation. Charitable registration and regulation are undertaken elsewhere and should not be included in this legislation. The revised act, however, must accommodate the needs of charities to structure and govern themselves in accordance with charitable regulatory requirements located in other statutes.
2. **In addition to a modernization of the Corporations Act, reform of charitable regulation and oversight is urgently required.** We agree with United Ways of Ontario that the status quo with regard to charitable regulation and oversight is not adequate and call for the government to undertake reform of the administration of charities as part of the modernization of legislation governing the nonprofit and charitable sector.
3. **We believe a dedicated Not-For-Profit (NFP) Corporations Act is needed.** The revised act should focus exclusively on incorporation of not-for-profit and mutual benefit organizations that have public benefit objects. This will allow for robust distribution constraints on NFP corporations and provide improved clarity for both the nonprofit sector and the public as to the true nature of a NFP corporation. “True membership corporations” (organizations that can distribute assets to members upon dissolution) should be dealt with in other legislation.
4. **Not-for-profit incorporation should be “as of right”** similar to the for-profit legislation and to Saskatchewan’s not-for-profit legislation. We believe that robust distribution limitations and disclosure requirements for not-for-profit corporations will discourage organizations without public benefit purposes from applying for nonprofit incorporation. Moreover, the Canada Revenue Agency regulates, reviews and grants tax exemption status to eligible not-for-profit corporations so there is already an existing regulatory mechanism to prevent misuse of nonprofit status to avoid taxation.
5. **Except to the extent otherwise provided in its articles, a NFP corporation should have the corporate power and capacity of a natural person.** To provide otherwise will create an unnecessary barrier and impose constraints on not-for-profit organizations that are not imposed on for-profit corporations.

6. **The new act should not regulate or restrict the capacity of NFP corporations to earn revenues.** Revenues earned or received by a NFP corporation are directed toward meeting its public benefit objectives. As non-share capital corporations and with distribution constraints on NFP corporations, the public is assured that revenues will be used for the furtherance of the corporation's public good objectives.
7. **There should be no defined purposes for NFP Corporations beyond operating for public benefit purposes.** Classifications and definitions of allowable purposes for public benefit organizations invariably fail to capture the full scope and diversity of the activities undertaken by the sector. Moreover, the sector is known for its creativity and responsiveness to changing communities. Defining allowable purposes risks unduly stifling the sector's ingenuity.
8. **NFP legislation should have robust distribution constraints preventing excessive compensation to staff, directors, and members** with exceptions for indemnification, expenses, and remuneration of a director or member for services. Upon dissolution, the assets of the NFP corporation would be gifted to another like organization or as set out in its by-laws, keeping the assets in the public domain.

It is not too late to participate in the consultation process even though the official response deadlines have passed for Discussion Papers 1 and 2. ONN is preparing a brief on Discussion Paper 2.

**A quick response method is to copy the recommendations summarized above and add your comments under each recommendation.**

See page 16 for information on how to submit your comments. To find the government consultation papers visit our website: [www.ontariononprofitnetwork.ca](http://www.ontariononprofitnetwork.ca)



# ONTARIO NONPROFIT NETWORK

## About the Ontario Nonprofit Network

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The Ontario Nonprofit Network (ONN) is a diverse group of public benefit organizations have come together following the publication of the first consultation paper by the Policy and Consumer Protection Services Division, Ministry of Government and Consumer Services (MGCS). This paper, issued in May 2007, proposes to modernize the *Ontario Corporations Act*. Those of us who took a look at this paper soon realized that, as a sector, we were ill-prepared to participate in the very legislation that was to govern our affairs.

The timing of the release of the consultation paper coincided with a decision to form the Ontario Nonprofit Network, a loose coalition of individuals and organizations operating across the breadth of the sector, including arts organizations, social service organizations, environmental organizations, community health agencies, international service organizations, social economy organizations and others. The intent is to include in the network the nonprofit and charitable organizations working for the public good in Ontario. The very strength of our sector is its tremendous diversity. As we develop, we hope to be able to reach many organizations on a regular basis with information and, as issues arise, that those organizations most affected can provide network leadership, and that the rest of the sector can support and amplify the work of our colleagues. In this way, we hope to increase the profile and capacity of the sector to participate in public policy in Ontario in a cost-effective manner. The Corporations Act is the first of the issues we are tackling this way. It affects every single nonprofit and charitable organization in Ontario.

In coming together to address the Corporations Act, we have assembled a small working group. Individuals with a wide diversity of views and perspectives from the sector, in partnership with some legal experts in nonprofit law, have formed an Expert Working Group. This committee is charged with examining the consultation documents and legislative reform proposals from the Ministry of Government and Consumer Services, providing feedback to the Ministry, and providing the sector with advice and comments.

ONN is working collaboratively with staff at MGCS and the Ministry of Citizenship and Immigration to ensure nonprofit organizations participate in the modernization of the legislation.

MGCS has issued two consultation papers to date and recently issued Supplementary Materials to the first consultation paper.

## This Brief

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In this brief, we address the issues raised in the first consultation paper and the supplementary materials. We have sought to explain the issues and choices facing the nonprofit sector as understood from the sector's perspective. This document will be of interest to all public benefit organizations, especially the medium and smaller nonprofits that do not have access to their own legal advisors.

The immediate focus of the Expert Working Group is on the Corporations Act, but in doing this work, we have continually encountered the pressing need to review and improve charitable regulation for Ontario's charities. The approval and regulation of charities in Ontario is problematic and needs to be addressed, but it is a separate and distinct problem from the reform of the Corporations Act. The Expert Working Group agrees with United Ways of Ontario's call for a review of the approval and regulation of charities in conjunction with the modernization of the Corporations Act.<sup>2</sup> We will return to this issue in the following pages.

In preparing this brief for the sector, we have borrowed heavily on the work of United Ways of Ontario and the Ontario Bar Association, just as we encourage you to adapt and use the recommendations and information we provide in this brief. We are building on our collective expertise and capacity.

As a sector, we are very focused on our missions, but to achieve those missions we need a legislative and regulatory framework that supports and enhances the work we do. The members of the Expert Working Group have agreed to delve deeply into the legislative framework to ensure that it meets the needs of our sector. We know many of our colleagues; do not have the time or resources to do the same. We are doing some work for you on this issue, knowing that someday you may advance other sector issues on our behalf.

**Your obligation in this initiative is to take our work and make your voice heard by agreeing and supporting our recommendations or by raising alternative points of view. The only thing you should not do is stay silent and think we can do the job for you. Only when we speak up in large numbers will we have the ability to shape the Ontario of tomorrow.**

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<sup>2</sup> United Ways of Ontario submission, "Modernization of the Legal Framework Governing Ontario Not-For-Profit Corporations," September 28, 2007.

## Key Principles for Legislative Reform of the Corporations Act

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In this section we identify the key principles that the Expert Working Group feels should underpin modernization of the Corporations Act. Obviously, in a revised act there are many decisions and choices to be made, but many of the act's provisions are not likely to be controversial. The Expert Working Group has focused on the fundamentals. Getting the underlying principles right is the key to ensuring that any new act meets the needs of the sector. Our recommendations flow from six key principles, which are discussed below.

### Principle 1:

**Do not include regulation in the Not-for-Profit Corporations Act; improve charitable regulation occurring elsewhere.**

The Corporations Act provides the structural framework for not-for-profit corporations. This framework applies equally to charities and not-for-profit corporations. However, charities are covered by additional rules, regulations, and reporting requirements set out in various pieces of legislation that regulate charities.

At several points in the consultation document, it appeared that using the Corporations Act to regulate the sector was being considered. From the perspective of the sector, such additional regulation is redundant and would add to an already confusing, overlapping and, at times, contradictory regulatory regime for charities. Moreover, using the Corporations Act to regulate charities has the potential to constrain not-for-profit public benefit organizations without charitable status in ways that will not be helpful.

Charities are regulated provincially by the Ministry of the Attorney General, Office of the Public Guardian and Trustee and federally by the Charities Division of the Canada Revenue Agency (CRA). This double regulation, with conflicting roles and responsibilities, is confusing. United Ways of Ontario have addressed this issue in their brief:

With respect to corporations seeking charitable status, we believe the public interest would be served and protected with an increase, rather than a decrease, in government scrutiny.

Charitable status serves to identify an organization with respect to its values and its activities. Donors assume their dollars will be used for the amelioration of social or economic conditions for individuals or communities, fostering health and well-being, environmental stewardship, sustaining arts, cultural, amateur sport and other recreational activity, or any number of “good works”. The public assumes their donation will not be used to personally enrich an organization's staff or directors.

However, a real danger exists that unscrupulous persons may abuse their organization's charitable status and breach the public's trust in

registered charities. An investigative report by the *Toronto Star* in June 2007 sought to explore the extent of the problem and concluded, “Bogus charities that prey on donors’ heartstrings are frequently licensed and allowed to carry on fundraising activities for many years before they are shut down, if they are shut down at all.” The report painted a picture of federal oversight mechanisms that are wholly inadequate with broad negative implications for legitimate charitable activity. “Multi-billion-dollar sector may be at risk as toothless watchdog allows bogus agencies to prey on giving public.”<sup>3</sup>

We agree with the thrust of the United Ways of Ontario report and concur that without appropriate reforms, an erosion of public trust in the charitable sector is a real and dangerous possibility.

### **Recommendations**

**1. The revised act should focus exclusively on not-for-profit (NFP) incorporation.**

While some not-for-profit corporations will also seek and obtain charitable status, the Corporations Act should not attempt any charitable regulation. Charitable registration and regulation are undertaken elsewhere and should not be included in this legislation. The revised act, however, must accommodate the needs of charities to structure and govern themselves in accordance with charitable regulatory requirements located in other statutes.

**2. In addition to the modernization of the Corporations Act, reform of charitable regulation and oversight is urgently required.**

We agree with United Ways of Ontario that the status quo with regard to charitable regulation and oversight is not adequate, and we call on the government to undertake reform of the administration of charities as part of the modernization of legislation governing the nonprofit and charitable sector.

### **Principle 2:**

#### **Develop a dedicated Not-For-Profit Corporations Act.**

One of the reasons there is so much confusion about the Corporations Act is that it covers a number of distinct groups and has some provisions for some groups and other provisions for other groups, and so on. (Currently, for example, trade associations, golf clubs, charities, and social enterprises are all included in the same legislation) The Ontario Bar Association has raised the option of having a stand-alone Not-for-Profit Corporations Act. We think this is a very good idea.

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<sup>3</sup> “Charity scams bust public trust,” *Toronto Star*, June 2, 2007.



The current Corporations Act is cumbersome and confusing because it includes several different types of organizations. A dedicated act for public benefit organizations would allow for clear provisions for the structure of public benefit NFP corporations. NFP incorporation under this act would have robust constraints prohibiting distributions to members during the existence of the corporation. (The exception to the rules would permit public benefit corporations to provide community economic development assistance or poor relief to members and make grants to members to carry on a corporation's work.) There would also be a prohibition on distributions to members upon dissolution. Assets at dissolution would be distributed to other not-for-profit corporations.

The Ontario Bar Association brief addresses this issue:

What is still not fully settled is whether the new Act should attempt to treat member corporations that are permitted to distribute surplus assets to their members on a liquidation/dissolution within the same legislative regime governing corporations that cannot make any distributions to members either currently or on liquidation/dissolution. One option is to include these member corporations (examples include golf, tennis and curling clubs, which for convenience may be called "true membership corporations") in the new Act. Another approach is to not mix these fundamentally different types of corporations within the same statute but to confine the new statute to NFP corporations that cannot distribute profits or surplus assets to members (which for convenience may be called "pure NFP corporations").<sup>4</sup> In this later case, true membership corporations would either be left behind in the OCA or the members of the corporation could choose whether to convert the corporation into a business corporation under the OBCA,<sup>5</sup> a cooperative corporation under the OCCA<sup>6</sup> or a nonshare corporation under the NFP Act.

ONN supports the creation of a Not-For-Profit Corporations Act dedicated to public benefit organizations that prohibits distribution of assets to members. This will provide improved transparency to the public.

### **Recommendation**

#### **3. Develop a dedicated Not-For-Profit (NFP) Corporations Act.**

The revised act should focus exclusively on incorporation of not-for-profit and mutual benefit organizations that have public benefit objects. This will allow for robust distribution constraints on NFP corporations and provide improved clarity for both

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<sup>4</sup> One advantage of this approach is that it would provide clarity of purpose for, and eliminate confusion within, the new act and the corporations governed by it.

<sup>5</sup> Ontario Business Corporations Act.

<sup>6</sup> Ontario Cooperative Corporations Act.

the nonprofit sector and the public as to the true nature of a NFP corporation. “True membership corporations”<sup>7</sup> (organizations that can distribute assets to members upon dissolution) should be dealt with in other legislation.

### **Principles 3:**

#### **Include “as of right” and “natural person” provisions in not-for-profit legislation.**

Not-for-profits need to be able to go about their public benefit purposes with few constraints. Currently under the Corporations Act, not-for-profit corporations do not have the same rights as for-profit corporations. This has sometimes created difficulties in how they go about their work.

After much debate, the Expert Working Group agrees with the Ontario Bar Association’s call for “as of right” incorporation of not-for-profit corporations. The other option we considered was the “partial as of right” option, which would require a review of the organization’s objects to ensure public benefit objectives before the incorporation was approved.

In the following section, we outline the two options and our current thinking on these issues. We will be undertaking further research in other jurisdictions on this issue.<sup>8</sup> *If you know of examples where groups have created nonprofit corporations for purposes that are harmful to the sector or public we would like to hear from you.*

The Expert Working Group is concerned that if nonprofit organizations do not have a public benefit purpose, the sector’s trust with the public may be damaged. On the other hand, we have not been able to identify examples of such organizations. We currently believe that if new legislation contains robust distribution constraints and transparency requirements, organizations that are not providing a public benefit will have little interest in incorporating as a NFP corporation.

For-profits have used membership corporations under the current Corporations Act to undertake collaborative ventures, typically advertising and promotion activities. But we do not know if this would be the case if there were rigorous non-distribution constraints in place. On the other hand, will requiring even a partial control on the “as of right” incorporation embroil the government and the sector in debates about what is a public benefit? Will the definition of public benefit exclude new and emerging public initiatives? Is a not-for-profit just the absence of profit taking, as the Ontario Bar Association suggests? If you have experience with this issue, please share it with us and MGCS. Which option do you think will best serve the nonprofit sector?

The MGCS Supplementary Materials document, pages 3 and 4, sets out four options for the Corporations Act:

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<sup>7</sup> The submission by the Ontario Bar Association to the Ministry of Government and Consumer Services on the Corporations Act identifies “true membership corporations” that exist to serve their members as being fundamentally different from public benefit organizations and suggests the interests of both may be better served if they were not in the same legislation.

<sup>8</sup> We recently received funding from the Law Foundation to undertake this research.

- A. Retain the current discretionary letters patent system (i.e., a comprehensive review of the name, purpose, and special provisions).
- B. Provide for incorporation “as of right” with government review of the proposed name only.
- C. Provide for partial “as of right” incorporation with a review of the proposed name and a limited review of the purposes and special provisions.
- D. Provide for incorporation “as of right” with a review of proposed names for applications using pre-approved provisions; all other applications would receive the existing discretionary letters patent system review.

The Ontario Bar Association calls for option B, incorporation “as of right” with just name approval:

Ontario should adopt an incorporation “as of right” system. Like incorporation “as of right” under the OBCA, incorporation of a nonshare corporation should only be subject to name approval. We note that Bill C-21, the SK Act and the ABA Model Act each provide for incorporation “as of right.”

The new Act should be a facilitative document focused on primarily procedural rather than substantive matters. The new Act should not be primarily regulatory.

Others in the sector worry that not-for-profits be truly public benefit corporations and think that option C, partial “as of right” incorporation, strikes a better balance. Permitted purposes become dated and have the potential to constrict the focus and scope of a not-for-profit. For this reason, we think option D is not suitable and, for the same reasons, we reject the status quo of option A.

Once incorporated, NFP corporations should have no more constraints placed on their activities than do business corporations under the OBCA. This is an important but rather legal argument best articulated by the Ontario Bar Association:

Like the OBCA, the new Act should, as discussed further at Part 5 below, abolish the *ultra vires* doctrine as it applies to nonshare corporations. Except to the extent otherwise provided in the articles, a nonshare corporation should have the corporate power and capacity of a natural person. A corporation’s articles could opt to set out limits on the corporation’s permitted activities or powers. However, if a corporation strayed beyond its permitted activities and purposes as stated in its constating document, this should not affect the validity of contracts or transactions involving third parties. Instead, contravention could, for example, give rise to an action by a member to obtain a compliance or restraining order to ensure that the corporation adheres to its stated activities or goals.

The new Act must give incorporators the option to include restrictions on activities or objects in a corporation’s articles. For example, a charitable corporation is required to state its objects in its letters patent or restrict its permitted activities and powers in its articles of incorporation in order to effect its charitable purposes and to obtain recognition as such from CRA.<sup>9</sup> Adopting restrictions in its articles is how a

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<sup>9</sup> Under the *Income Tax Act*, a charity may not only qualify for tax-exempt status on its income but may also qualify to issue receipts that entitle donors to obtain federal and provincial tax credits on their own income tax liabilities.

charitable corporation is formed under the SK Act, and the CRA has found this to be acceptable.

The incorporation form should direct applicants for incorporation of a charitable or public benefit corporation (many of whom are likely to seek incorporation without the benefit of legal advice or advice from lawyers who specialize in the formation of NFP corporations) to check out the website of the Public Guardian and Trustee (the “PGT”) to ensure that, in addition to incorporation, the corporation obtains approval for its intended charitable purpose.<sup>10</sup>

### **Recommendations**

4. **Not-for-profit incorporation should be “as of right”<sup>11</sup>** similar to the for-profit legislation and to Saskatchewan’s not-for-profit legislation. We believe robust distribution limitations and disclosure requirements for not-for-profit corporations will discourage organizations without public benefit purposes from applying for nonprofit incorporation. Moreover, the Canada Revenue Agency regulates, reviews, and grants tax exemption status to eligible not-for-profit corporations, so there is already an existing regulatory mechanism to prevent misuse of nonprofit status to avoid taxation.
5. **Except to the extent otherwise provided in articles, a NFP corporation should have the corporate power and capacity of a natural person.<sup>12</sup>** To provide otherwise will create an unnecessary barrier and impose constraints on not-for-profit organizations that are not imposed on for-profit corporations.

### **Principle 4:**

#### **Place no constraints on earned revenues for not-for-profit corporations.**

Not-for-profit corporations are increasingly turning to earned revenue to fund their activities. Whether they are theatres increasing ticket sales, environmental groups providing environmental services for a fee, or youth groups earning revenue for their activities, they are all trying to increase their capacity to be self-reliant.

The right of a nonprofit to earn revenue is essential. Recent Statistics Canada data<sup>13</sup> reported that in 2004, 41.7% of core nonprofit sector revenues (i.e., excluding hospitals and universities) came from sales and services. In contrast, only 20.35% came from government. Earned revenue is by far the largest single source of revenue for the sector.

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<sup>10</sup> It is critical for MGCS to ensure that the new act is not at odds with other relevant legal regimes affecting NFP corporations, including, in particular, the federal tax system and the provincial regime regulating the activities of charities. As well, some ready mechanism should be developed so that a newly founded charitable corporation can adopt the PGT’s mandatory requirements for charitable corporations.

<sup>11</sup> “As of right” incorporation means that anyone wishing to could incorporate a corporation as long as the name did not overlap with that of an existing corporation. For-profit incorporation is as of right.

<sup>12</sup> The Ontario Bar Association speaks directly and persuasively to this point on pg. 7 of its submission.

<sup>13</sup> <http://www.statcan.ca/Daily/English/071207/d071207b.htm>

We agree with the United Ways of Ontario brief, which rejects the suggestion in the consultation document that NFP corporations provide unfair competition with for-profit-business. The United Way submission argues that the reverse is true: for-profit business has considerable advantages over NFP corporations.<sup>14</sup>

The government's Supplementary Materials present two options on commercial activity:

- A. Place no restriction on commercial activity in furtherance of nonprofit purposes.
- B. Place some restriction on commercial activity.

We agree with the United Ways of Ontario submission and believe the field strongly prefers option A, no restriction on commercial activity. Nonprofits need to be able to earn revenues to further their objects.

### **Recommendation**

#### **6. The new act should not regulate or restrict the capacity of NFP corporations to earn revenues.**

Revenues earned or received by a NFP corporation are directed toward meeting its public benefit objectives. As non-share capital corporations and with distribution constraints on NFP corporations, the public is assured that revenues will be used for the furtherance of the corporation's public good objectives.

### **Principle 5:**

#### **Do not include a definition of not-for-profit corporations.**

The Ontario Bar Association advises against having defined purposes of nonprofit organizations and quotes Professor Hansmann on this point:

Restricting the purposes for which nonprofits can be incorporated serves no obvious need that could not be better served by other means. Moreover, to the extent that the statutory restrictions actually limit the scope of nonprofit activity, they might well cause unnecessary harm. The service sector of our economy is growing rapidly, both in absolute terms and as a fraction of the nation's total economic activity... A restrictive, and particularly a conservative, approach to nonprofit incorporation might therefore inhibit the development of these services, or push them inappropriately into the proprietary or governmental sectors. The wiser course would be to permit nonprofit corporations to be formed for the purpose of undertaking any activity whatever (consistent, of course, with the non-distribution constraint and the criminal law).<sup>15</sup>

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<sup>14</sup> The September 28, 2007 submission of the United Ways of Ontario Council to MGCS, pages 7-9, argues this point very effectively.

<sup>15</sup> Ontario Bar Association submission

The Ontario Bar Association submission goes on to say:

The new Act should not set out a list of permitted purposes. Rather, a nonshare corporation should be permitted to carry out any purpose other than the pursuit of profit for distribution to its members. It might help clarify matters if the new Act referred not to NFP corporations but instead to nonshare corporations since the distinctive characteristic of corporations formed under the new Act is that they would not have shares and, therefore, would not be able to pay dividends or, on liquidation/dissolution, distribute their residual assets to members.<sup>16</sup>

The ONN Expert Working Group supports the conclusions of the Ontario Bar Association on this issue. The act should not have defined purposes for NFP corporations.

### **Recommendation**

**7. There should be no defined purposes for NFP corporations beyond operating for public benefit purposes.**

Classifications and definitions of allowable purposes for public benefit organizations invariably fail to capture the full scope and diversity of the activities undertaken by the sector. Moreover, the sector is known for its creativity and responsiveness to changing communities. Defining allowable purposes risks unduly stifling the sector's ingenuity.

### **Principle 6:**

**Include robust constraints on the distribution of funds.**

A not-for-profit corporation shall be carried on without the purpose of financial gain for its members, which means that they must and do spend their money to forward their work rather than distributing it to shareholders as for-profit corporations do. As non-share capital corporations, NFP corporations will be prevented from distributing their funds to their directors or members except under certain limited conditions related to forwarding the corporations work. Moreover NFP corporations should not excessively compensate their staff, members, or directors.<sup>17</sup>

### **Recommendation**

**8. NFP legislation should have robust distribution constraints preventing excessive compensation to staff, directors, and members with exceptions for indemnification, expenses, and remuneration of a director or member for services.**

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<sup>16</sup> This formulation assumes that the new act would cover pure NFP corporations and would not attempt to provide for true membership corporations.

<sup>17</sup> In subsequent consultation papers, the details of the distribution constraints will be discussed in greater detail.

Upon dissolution, the assets of the NFP corporation would be gifted to another like organization or as set out in its by-laws, keeping the assets in the public domain.<sup>18</sup>

In this section of the report, we have provided background on our recommendations. We hope you find our work helpful in preparing your response to MGCS.

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<sup>18</sup> Distribution constraints are sometimes referred to as “non-distribution constraints,” which makes the point but is a double negative. Regardless of the term, the legislation will require not-for-profit corporations to use their funds for public benefit by placing ongoing operating constraints on excessive compensation and payments to members and directors and will require on dissolution that the corporation’s assets be gifted to an organization serving the public good.

## Your Response

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This legislation is critical for the sectors long-term well-being. Please participate in the consultation process by making your views known.

The greater the number of organizations who participate, the greater the likelihood we will obtain legislation that meets the sector's needs. It has been 50 years since the last major revision of this legislation. We cannot afford to miss this opportunity!

### Please direct your response to:

Corporations Act Modernization  
Ministry of Government Services  
Policy Branch  
777 Bay Street  
5th Floor – Suite 501  
Toronto, ON M7A 2J3  
(416) 326-8877

Email: [business.law@ontario.ca](mailto:business.law@ontario.ca)

### Please also send a copy to:

Janice Wiggins, Chair of the Expert Working Group  
[janice@volunteerlawyers.org](mailto:janice@volunteerlawyers.org)

A quick response method is to copy the recommendations summarized in the *Recommendations at a Glance* section on page 3 of this report and add your own comments following each recommendation.



## Where to Find More Information

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If you want to delve more deeply into this issue, the consultation documents can be found on the Government of Ontario website at:

<http://www.gov.on.ca/MGCS/en/AbtMin/132784.html>

Look for the following two documents:

- Modernization of the Legal Framework Governing Ontario Not-for-Profit Corporations (Corporations Act, Consultation Paper 1, May 7, 2007)
- Supplementary Materials to the May 7, 2007 Consultation Paper

## Coming Soon

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The Ontario Nonprofit Network is in the process of setting up a website ([www.ontariononprofitnetwork.ca](http://www.ontariononprofitnetwork.ca)) which will include the ONN's Expert Working Group's briefs, important sector news, and links to the United Ways of Ontario submission and the Ontario Bar Association submission.

The Expert Working Group will prepare briefing notes on the second consultation document and will prepare briefing notes when the third consultation document is issued.

Make sure to visit ONN's website and sign up to receive regular information.

## Appendix A

Expert Reference Group	Organization	Sector
Peter Alexander	Senior Policy Analyst, United Way of Toronto and representative for United Ways of Ontario	United Appeal Funder
Pat Bradley	Theatre Office and Research Manager, Ontario Arts Council	Arts
Lynn Eakin	Funded by Metcalf Foundation to support sector organizational efforts	Nonprofit Sector Consultant
Rory Gleeson	Policy Analyst, Ontario Association of Children's Aid Societies	Child Welfare
Margaret Hancock	Executive Director, Family Service Association of Toronto	Social Services
Alyson Hewitt	Director, Social Entrepreneurship, MARS	Social Enterprise
Brian Iler	Iler Campbell LLP	Lawyer
Ted Jackson	Chair, Carleton University Center for Social Innovation	Social Enterprise
Axel Janczur	Executive Director, Access Alliance, a community health centre serving immigrants, refugees and people without status	Community Health
Laurie Mook	Manager, Center for Social Economy, OISE, University of Toronto	Social Economy
David Stevens	Gowlings LLP, and Ontario Bar Association Charity Law Section	Lawyer
Janice Wiggins (Committee Chair)	Project Director of Volunteer Lawyers Service, Pro-Bono Law Ontario	Social Justice