



December 19, 2007

Delivered by Canada Post

Corporations Act Modernization
Ministry of Government and Consumer Services
Policy Branch
777 Bay Street, 5th Floor, Suite 501
Toronto, ON M7A 2J3

Dear Ministry Representatives:

Re: Modernisation of the Corporations Act

We are pleased to provide our comments on the proposed reform of the Ontario *Corporations Act*¹ (the “Act”). The Canadian Federation of Students–Ontario is the provincial students’ union. Comprised of over 300,000 members and more than 35 member local college and university students’ unions, the Federation provides post-secondary students with an effective and united voice to represent our concerns to government and a mechanism for organising cost-saving member services. Generally, our member local unions are without share capital corporations incorporated under the Act.

At the outset, we would like to commend the government for deciding to reform the Act and for undertaking extensive public consultations. We believe that the not-for-profit sector in Ontario is thriving. To continue to succeed, not-for-profits must remain accountable to their members and must be perceived by the public as credible professional organisations. We believe that the modernisation of the Act will help to ensure the ongoing accountability and credibility of the sector.

We set out below three specific suggestions for reform. Our suggestions do not specifically respond to issues raised in the first two consultation papers. However, our suggestions are consistent with Ontario’s goal to modernise the Act.

1. Update the mechanisms for delivery of notice to include electronic mail

Several important provisions of the Act give members of corporations without share capital a right to adequate notice of certain events. For example, members have a right to notice of annual

¹ R.S.O. 1990, c. C.38.

general meetings and special meetings of members,² including but not limited to meetings to remove directors³ or the auditor,⁴ to confirm transactions in which a director may have a material interest,⁵ and to wind up the corporation.⁶ The Act currently requires as its default that notices be sent by pre-paid mail.⁷

We recommend that the new version of the Act permit corporations to deliver all such notices to members by electronic means. One alternative is to amend Section 93 (and other similar provisions) to permit delivery of notices and documents under the Act by electronic means, in accordance with the *Electronic Commerce Act, 2000*. We submit that this revision would be appropriate for the following reasons:

- (a) The change would be consistent with changes that have already been made to the Ontario *Business Corporations Act* (the “**OBCA**”). Section 262(6) of the OBCA, which is substantially similar to Section 93 of the Act, now provides that: “A notice or document required or permitted to be sent under this section or section 263 may be sent by electronic means in accordance with the *Electronic Commerce Act, 2000*.”
- (b) The change would be consistent with the practice in other jurisdictions outside of Canada. For example, Australia permits not-for-profit companies, which must register under the *Companies Act, 2001*,⁸ to send notice of meetings by electronic mail.⁹
- (c) Using electronic mail would be more affordable for organisations. For many of the corporations formed under the Act, the cost of sending notice by prepaid mail is a significant burden. This is particularly true for organisations that have a large number of members. For instance, several of our member unions have tens of thousands of members.
- (d) Electronic email is now a reliable and consistent way to reach members. It is our experience that the members of many organisations change postal addresses more frequently than email addresses. This is particularly true of our student members. The use of electronic mail to deliver notice would make it easier for organisations to keep their more mobile members informed of important decisions, which is the policy rationale for the notice provisions.

² *Ibid.*, s. 93.

³ *Ibid.*, s. 67.

⁴ *Ibid.*, s. 94(4).

⁵ *Ibid.*, s. 71(5).

⁶ *Ibid.*, s. 230.

⁷ *Ibid.*, s. 93.

⁸ See “Registering not-for-profit or charitable organizations”, online: Australian Securities and Investments Commission < <http://www.asic.gov.au/asic/asic.nsf/byheadline/Registering+not-for-profit+or+charitable+organisations?openDocument>>.

⁹ *Companies Act, 2001* (Australia), s. 249J(3)(c).

- (e) Electronic mail is ubiquitous. The Act, which has not been substantially amended since 1953,¹⁰ was written long before electronic mail was ever contemplated. Now, almost everybody has access to email. This is particularly true of the students who belong to our member unions. To the best of our knowledge, every university and college student is provided with an electronic mail account and with access to the Internet. The schools increasingly rely on electronic mail as the principal means of communicating with students about administrative matters. Electronic email has thus been proven to be an effective way to reach the students who belong to our member local unions.

2. Add a definition of “address” that includes electronic mail addresses

The term “address” is used in several provisions of the Act, including in the provisions relating to member meetings¹¹ and to the maintenance of a register of members by the corporation.¹² However, “address” is not expressly defined.

We recommend that the Act be amended to include a definition of “address” which would, given the importance and prevalence of electronic communication (as described above), necessarily include electronic mail addresses. As such, electronic mail addresses would then be collected and utilised by corporations to communicate with their members. We submit that this revision would be consistent with our recommendation regarding the delivery of notice by electronic mail.

3. Empower the Minister to make regulations that facilitate the sharing of members’ contact information

Some types of organisations face significant challenges in establishing first contact with their members. Member unions of the Federation, for example, add thousands of new students each year. Obtaining contact information for these new students, particularly electronic mail addresses, can be extremely difficult. The colleges and universities that our members attend have the students’ contact information on file. Most schools recognise the valuable role our member organisations play on campus and on the student experience generally, and while not opposed to providing the information apparently feel hindered from doing so by applicable privacy legislation.

We recommend that the Minister be given the discretionary power to make regulations that would permit or require designated third parties to transfer the information that a corporation is required to include in its register of members to designated corporations. We submit that this additional power would be appropriate for the following reasons:

- (a) The regulations could help certain organisations be more accountable to their members. The modernisation of the Act should be intended to make corporations

¹⁰ For a brief history of the Act, see “Modernization of the Not-for-Profit Corporations Act of Ontario” Briefly Speaking (October/November 2007), online: <<http://www.gardiner-roberts.com/documents/articles/Modernization-of-Not-For-Profit-Corporations-Act-of-Ontario.pdf>>.

¹¹ *Supra* note 1., s. 93.

¹² *Ibid.*, s. 300.

more accountable to their members. The regulations promulgated pursuant to this power would make it easier for organisations like students' unions to notify members of every opportunity to participate in the management of the corporations.

- (b) The power would be discretionary. The Minister would be able to consider privacy rights in the context of the benefits that would accrue to the corporation's members as a result of granting permission for the designated third party to disclose the information. The Minister could make regulations that were targeted exclusively at sectors where such disclosure would be of net benefit to the members.
- (c) The power would be flexible. The Minister could craft regulations that would include appropriate safeguards for the affected members. For example, the Minister could permit individual members to opt out of such information sharing.

We respectfully ask that you share our suggestions with other stakeholders. We believe that these modest reforms would significantly modernise the Act and greatly improve the value that organisations like the Federation and local college and university students' unions could deliver to their members. Should you have any questions or comments about our recommendations, please do not hesitate to contact Ken Marciniak (communications@cfsontario.ca) or Jesse Greener (campaigns@cfsontario.ca) at 416-925-3825 as either would be pleased to clarify or discuss these suggestions.

Yours truly,

Jen Hassum
Chairperson, Canadian Federation of Students—Ontario