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Standing Committee on Social Policy
Legislative Assembly of Ontario
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On behalf of three corporations without share capital, incorporated under the laws of Ontario, namely Trent Radio, PR Community and Student Association (Sadleir House Facility), both of whom are registered charities; and Trent Student Annual Publishing Corporation; **a written submission relating to the proposed "Bill 65, An Act to revise the law in respect of not-for-profit corporations"** (we refer to as "Bill 65").

For the most part "the law" to be revised by Bill 65 is the "Corporations Act R.S.O. 1990, CHAPTER C.38" (we refer to as "Corporations Act")

We are looking to revisions to the law to include;

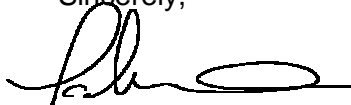
- 1) better provisions for making notice,
- 2) better provisions for determining the degree of financial scrutiny required - audit, financial review, etc., and
- 3) a reorganisation of protection relating to directors' liability, which has been degraded by the courts over the last 30 years.

We are grateful to the work of the Ontario Nonprofit Network (<http://ontariononprofitnetwork.ca>), and broadly support their written submission made to you, dated 12 August 2010 (we refer to as "ONN Submission") with a few significant additions, amendments and exceptions as set out below in the order that they appear in Bill 65 - the proposed legislation. We ask that you pay special attention to the ONN suggestions relating to directors' liability.

We are also grateful for an opportunity to make this submission. As a citizen and a participant in not-for-profit governance for more than 35 years who appreciates the huge importance of the non-profit sector to the economy and to the welfare and quality of life of all of our citizens, I am astonished that this project appears to have languished for more than three years, bereft of any significant attention until this summer. I would have thought that during this time there would have been some documentation posted, summarising the comments that were received, an updated discussion paper and a draft statute at an absolute minimum.

If you need any further information, please do not hesitate to contact me.

Sincerely,



John K Muir

on behalf of, and variously as;

Vice-president and General Manager, Trent Radio

Secretary/Treasurer, PR Community and Student Association (Sadleir House Facility)

Secretary/Treasurer, Trent Student Annual Publishing Corporation

Recommendation 1 of 8

With reference to Bill 65 s8 ss3 "commercial activities to advance or support only non-profit purposes"

We note that certain Ontario not-for-profits, such as universities, have become involved in commercial activities to advance and support two-to three-fold increases in salaries paid to their senior administrators. In a few short years the salary of the university president here in Peterborough went from about \$120,000 to almost \$350,000. We are very concerned by this trend, and suggest some kind of limit to be put on this type of expenditure, although we understand that this may not be within the scope of Bill 65.

Recommendation 2 of 8

With reference to Bill 65 s17 "By-laws" ss3 "Effective date"

Contrary to the ONN Submission (page 11), we are in accord with the proposed provisions which are consistent with the Corporations Act. We believe that it is the job of a membership to appoint a board to deliberate and determine policy for the corporation, and for that same membership effect its oversight by confirming or rejecting by-laws. If the ONN Submission was followed, all the work of a Board (meaning its determinations and resolutions), would not come into effect until the next membership meeting - not conducive to good governance. Thus we contend that it is dangerous if a by-law cannot take immediate effect, and must wait until confirmed by the membership.

Recommendation 3 of 8

With reference to Bill 65 s23 "Qualifications of directors"

- ss2 "Non-member directors" & - ss3 "Minimum number of directors who are members"

We believe that in a corporation where the membership is the body authorised to elect or appoint its directors in an organisation, each of the directors at the time of their election or within ten (10) days thereafter and throughout their term of office should be a member of the corporation.

Recommendation 4 of 8

With reference to Bill 65 s23 "Qualifications of directors" ss4 "Restriction re public benefit corporation"

We consider this proposed provision bizarre, and a hindrance to good governance. While there should be concerns about employees (or anyone with a pecuniary interest) serving as directors, what about the instance whereby directors are appointed volunteer officers? We agree with the ONN Submission (pages 6-7 & 11) recommendation that it be deleted.

We wonder if what is being proposed is to deal with and limit the desire to have "some" directors to be paid officers.

We would thus suggest that for charities; "directors shall receive no remuneration for acting as such; and those receiving remuneration as employees of the corporation or regularly contracting with the corporation may not be members of the board of directors"; and that for other not-for-profit corporations; "directors shall receive no remuneration for acting as such; and no more than one-third of those receiving remuneration as employees of the corporation or regularly contracting with the corporation may be members of the board of directors".

Recommendation 5 of 8

With reference to Bill 65 s26 "Removal of directors"

Bill 65 proposes that Directors may be removed by ordinary resolution of the members, while the Corporations Act requires a two-thirds vote in favour of removal to do so. The Bill 65 preamble does not explain why this is proposed. We believe the Corporations Act is good law in this matter. The appointment or election of a Director should not be undertaken lightly, and should require the extra weight of a two-thirds vote in favour for removal to reverse it. This is not inconsistent with the two-thirds vote requirement to rescind a duly carried resolution. In addition we recommend that no-one may be eligible for re-election or reappointment until one year has elapsed from the date of their resignation or removal from the Board to enhance the seriousness of the matter and to limit grandstanding and other vexatious or capricious activities.

Recommendation 6 of 8

With reference to Bill 65 Part VI s63-s66 Proxies

We completely concur with the ONN Submission (pages 8-9 & 12), to wit; "While proxies can play an important role, the determination of whether they are allowed and who qualifies to be a proxy holder should be a decision for the nonprofit corporation. Bill 65 should be amended to recognize that subsection 64(1) applies unless otherwise provided for in the articles or by-laws and subject to restrictions contain therein.

Recommendation 7 of 8 - Audit and Financial Review Thresholds

With reference to Bill 65 s75

Differing from the ONN Submission (pages 8 & 12) we generally concur with the Audit and Financial Review Thresholds supervised through "extraordinary" resolutions of the members as proposed in Bill 65. This is a big improvement over the Corporations Act which requires unanimous consent of ALL members to dispense with an audit. Having said that, we make the warning that, while we do not underestimate the protective benefits of audited financial statements, it is simply impractical to cover the cost of audited financial statements for a lot of small not-for-profits. In some instances, it is impossible to retain a chartered accountant willing to take on the job. Even still, certain elements of a organisation's operations may not be auditable within meaning of the term according to generally accepted accounting principles. This could lead to very expensive and heavily circumscribed audit reports, which would give readers even less information than could be had from a review engagement.

As to the actual threshold amounts, we believe they are low, and would suggest the amounts of \$250,000 and \$1,000,000 to replace the Bill 65 proposed amounts of \$100,000 and \$500,000 respectively. We also ask that these thresholds, once enacted be reviewed, and increased as the Consumer Price Index rises.

Recommendation 8 of 8

With reference to Bill 65 s195 "Notice, etc., given to members and directors"

Under the Corporations Act s133 "Application of Part II provisions to Part III corporations", specifically ss133.1 refers to s93, wherein ss93.1(a) requires "notice of the meeting by prepaid mail";

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c38_e.htm#s93s1

However, ss133.2 does allow for notice via newspaper publication for a corporation whose objects are exclusively for charitable purposes.

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c38_e.htm#s133s2

We had been hoping that Bill 65 would extend "publication of notice" provisions for non-charity, not-for-profit corporations. Instead, s195 wipes out this method of notice for everyone.

A simple example of the problem can be demonstrated by looking at a particular non-profit corporation sponsored by the students of Trent University which was incorporated to manage the publishing of the annual student yearbook. Each full-time student at the Peterborough campus pays, as part of their ancillary fees, an \$18 membership for the year, which generates a total income of a little over \$100,000 per year for the organisation. The current Corporations Act and Bill 65 revisions require that such a corporation have at least one annual general meeting of the members. This corporation has as its members each and every student who is paying \$18 per year. The current Corporations Act and Bill 65 revisions require a mailed notice of the annual general meeting. This would mean the mailing having to go to more than 5,500 different people and would cost an estimated amount of \$10,000 - \$15,000 per year which is a significant portion of the total income of the corporation. Should it be necessary to have a special general meeting of the members, the organisation would have to incur the same cost a second time during the same calendar year. There are at least another half-dozen student non-profits at Trent which face similar problems, some with revenues of less than \$18,000. One might imagine this situation would extend across the province.

Practically speaking, these organisations have no choice but to ignore the legal requirements, or to adopt an artificial structure in order to be able to comply with this particular requirement, or to make an expensive legal pleading to the Superior Court of Justice

We believe any sensible person would view the Corporations Act notice provisions as outdated and expensive, and the Bill 65 provisions as all that and ridiculous since Bill 65 proposes to extinguish "publication of notice" for charities when it has become so easy for any not-for-profit to make information available on the Internet. The federal government has modernised its statute and it allows notice of meetings to be published in a newspaper, and we recommend that at least this method be put into the new law.

[end]