To Be Or Not To Be...Incorporated: Incorporation and Subsequent Activities of Charities

CLARE A. SULLIVAN
Goodman and Carr LLP, Barristers and Solicitors, Toronto

I. Introduction

This article will not review the question of whether or not to incorporate a nonprofit organization but will review the process of federal and provincial incorporation and note some points of interest regarding internal matters and external changes which are procedurally or substantively different from those for business corporations.[1]

Nonprofit corporations are incorporated in Ontario pursuant to the provisions of Part III of the *Corporations Act*[2] (*OCA*), and federally under the *Canada Corporations Act*[3] (CCA), as corporations without share capital. Part I of the *OCA* and those sections in Part II as specified in section 133, apply to nonshare corporations. In addition, all of Parts VI and VII of the *OCA* apply to nonshare corporations. Part II of the *CCA* applies to nonshare corporations and section 157 of that statute sets out which sections in Part I will also apply.

A nonprofit organization incorporated under the *OCA* or the *CCA* has separate legal status with perpetual existence regardless of changes in membership or directors. The separate legal status gives it the same limited liability that for-profit corporations enjoy in that the members are generally not liable for the debts of the corporation, and the corporation can sue and be sued in its own name. It can also hold real estate. However, fiduciary liability does attach to the directors of a nonprofit corporation which has charitable purposes. The Office of the Public Guardian and Trustee in Ontario, supported by recent judicial decisions,[4] takes the position that the directors of a charitable corporation are trustees of a charitable trust and subject to all the fiduciary duties and responsibilities of trustees. An Ontario charitable corporation and a federal charitable corporation operating in Ontario, will be subject to the provisions of the *Charities Accounting Act* and the *Charitable Gifts Act*[5] and will be subject to scrutiny by the Office of the Public Guardian and Trustee. In addition to the fiduciary liability of directors, liability can attach to members under the *OCA*. Where the corporation has fewer than three members, the remaining members can be liable for the debts of the corporation (*OCA*, section 311).

II. Getting Started

First and foremost, whether or not the intention is to incorporate federally or provincially the organization must determine the purposes for which it is being

incorporated and outline its objects. To acquire charitable registration under the *Income Tax Act*,[6] the objects must be exclusively charitable.

The corporation will also require a name[7] and the name cannot be too general. It must be distinctive and not the same as, or confusingly similar to, any other name currently in use. A name consisting only of a description and legal status may be too general. For example, "Fundraisers Inc." will be too general but if an acronym or coined word is added, the problem may be solved. If the proposed name uses a person's name or incorporates the name of another company, a consent from that person or company to the use of the name will also be required. Both the federal and provincial *Acts* prohibit names which suggest or imply a connection with the Crown or the government without the appropriate consent. In Ontario a nonprofit cannot use the word "Limited" or "Limitée" or corresponding abbreviations but can use "Incorporated" or "Corporation" and their corresponding abbreviations.

In order to ensure compliance with the *Acts* and regulations regarding names, Companies' Branch and Industry Canada both require submission of an original Name Search Report, (NUANS) either Ontario biased or federal, depending on the jurisdiction of incorporation, from a private name search company which has been conducted in the previous 90 days. If you request a name which does not comply with the legislative requirements, the search house will suggest it is not available for use or cannot be used. You can, at most search houses, request an initial search result verbally. The search house will not guarantee verbal results but this can reduce costs when you are trying to find a usable name. Once a name has been cleared verbally, you can request the full search.

The organization will also require incorporating directors. Both federally and provincially three applicants are required. They must be individuals (not corporations), at least 18 years old, who are not bankrupt. Federally, the applicants need not be the first directors. You should ensure you have the names, residence addresses and occupations of the applicants (and the first directors if different from the applicants).

The corporation will also require a head office address. The application, both federally and provincially, must include the municipality in which the head office will be located. The street address will also be required in the letter submitting a federal application.

You might also wish to determine who the members will be and what types of memberships the organization will have before incorporation. Federally, the general organizational bylaws must be submitted with the application for Letters Patent so the membership provisions will have to be finalized prior to submission of the application.

Since auditors are also required for charitable corporations, you should determine who will be the auditors. They can be of assistance in determining the

financial year end or any special considerations which might require review before incorporation.

(Companies' Branch, in conjunction with the office of the Public Guardian and Trustee, publishes an informal guide entitled *Not-for-Profit Incorporations Handbook* which can be obtained from the Queen's Printer.)

III. Incorporation in Ontario

As of October 1, 1999, charities can choose to incorporate in Ontario under a "fast track method" or the standard method. The fast track method uses preapproved objects clauses and other provisions in the Letters Patent. (Full information can be obtained from the Office of the Public Guardian and Trustee.) Any time a charity or nonprofit wishes to incorporate in Ontario and use objects clauses or provisions which are *not* in the Public Guardian and Trustee pre-approved version, the standard method of incorporation must be used. The application on Form 2 must first be submitted to the Charitable Property Division of the Office of the Public Guardian and Trustee for approval with a fee, currently $150. This office can take several weeks to approve the application. Once it is approved, the application for Letters Patent can be submitted to the Ministry of Consumer and Business Services (formally Ministry of Consumer and Commercial Relations), Registration Division, Companies Branch, 393 University Avenue, Suite 200, Toronto, Ontario, M5G 2M2.

Documents Required:

(i) Completed Application for Incorporation (Form 2), in duplicate, approved by the Public Guardian and Trustee;

(ii) Fee payable to the Minister of Finance;

(iii) Ontario-biased NUANS name search;

(iv) Any necessary name consents;

(v) A covering letter setting out the name, address and telephone number of the person or firm to whom the Letters Patent or any correspondence should be mailed.

The fee payable for incorporation is $155 for standard service (6-8 weeks processing time) or $255 for expedited service (7 business days).

IV. Incorporation Federally

There is no specific form for incorporation of federal nonprofit corporations but Industry Canada publishes a form in its policy guidelines which you are expected to use. There is no federal requirement to have the application preapproved by the Public Guardian and Trustee, even if the charity will operate in Ontario. However, there is also no "expedited" federal process and the application can take eight weeks or more to be processed and approved. (The incorporation date will be the date of submission of the application as finally approved.)

Section 155(2) of the *CCA* provides the application must be accompanied by bylaws governing memberships, meetings, bylaw changes, election, and appointment and removal of directors, among other things therefore, prior to making a federal application, the general organizational bylaw must be prepared.

The application documents are submitted to Industry Canada, Corporations Directorate, 9th Floor, Jean Edmonds Towers South, 365 Laurier Avenue West, Ottawa, Ontario, K1A 0C8.

Documents Required:

(i) Application, in duplicate;

(ii) Statutory declaration of at least one applicant swearing that the contents of the application are true;

(iii) Filing fee payable to the Receiver General for Canada (currently $200);

(iv) Canadian-biased NUANS search (or a $15 filing fee per search; a bilingual name requires two searches);

(v) One unsigned copy of the proposed bylaws, with Identifier, if applicable; and

(vi) A covering letter setting out the street address of the head office.

As with provincial corporations, a federal nonshare corporation is vested with all the powers specified in the *CCA*, as well as the power to do all things incidental to the attachment of its objects. The application should not reproduce any statutory or ancillary powers. Any powers sought to be restricted or withheld, on the other hand, must be set out as well as any additional powers not provided in the legislation.

V. Internal Changes and Other Points of Note

(a) Investing

In general, nonshare capital corporations are vested with the powers provided in the incorporating statute and those in the Letters Patent. The statutory ancillary powers are contained in section 23 of the *OCA* (*CCA* section 16). Before 1999, the *OCA* did not give directors of nonprofit corporations the power to invest and deal with monies of the organization as they saw fit. As a result, Letters Patent were often drafted to include the power to receive gifts, donations and legacies and the power to invest. Usually, the Public Guardian and Trustee would require the power to invest to be limited to investments authorized by law for trustees. As of March 1, 1999, the *OCA* was amended so that a nonprofit corporation has the power to invest specified in section 23(t) of the *OCA*. Therefore, it is no longer necessary to include a specific investment or donation power in the application for incorporation.

Notwithstanding that charitable corporations in Ontario have the power to invest as the directors determine, because the directors are considered "trustees" of the assets of the corporation for the charitable purposes set out in its

objects, they will be required to comply with the provisions of the *Trustee Act*.[8] On July 1, 1999, the *Trustee Act* was amended by repealing the provisions which authorized certain investments for trustees (known as the "legal list") and replacing these provisions with what is commonly known as the "prudent investor rule". In investing trust property, a trustee must exercise the care, skill, diligence and judgment of a prudent investor (subsection 27(1)). Trustees are also now authorized to invest in mutual funds (subsection 27(3)), and may obtain the advice of an investment advisor in relation to investments (subsections 27(7) and 27(8)). The new rules also require trustees to diversify investments (subsection 27(6)). In addition, Trustees *must* consider certain criteria (subsection 27(5)) in planning the investment of trust property, but will not be liable for a loss if the investments conformed to a plan or strategy for the investment, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances (section 28). It is therefore extremely important that directors of charities or trustees of charitable trusts establish an investment plan or strategy and review it periodically to take into account changing circumstances. The best evidence that such a plan or strategy is in place is a written plan considered by the directors and approved or adopted by resolution of the Directors.

The *Trustee Act* was further amended in 2001 and now specifically permits the charity to delegate investment responsibility to an agent if a prudent investor in like circumstances would do so. The legislation requires the charity to have a written agreement with the agent providing for compliance with, and regular review of, the investment plan. If the charity engages an agent to make its investments, such agent may not be able to purchase mutual funds or pooled funds as this may be considered a redelegation of authority, which is not permitted.

Federally incorporated charities have the power to invest and deal with corporate funds pursuant to section 16(1)(v) of the *CCA*. However, if the charity operates in Ontario, it will be subject to the provisions of the *Trustee Act*. Some other provinces have similar rules for charities and for trustees which should be reviewed for each province in which the federal entity operates to determine what standards must be met.

(b) Indemnities and Directors' Liability Insurance

Before the recent changes to the *OCA*, the Public Guardian and Trustee in Ontario took the position that a charitable corporation could not indemnify its directors or pay for directors' liability insurance out of the assets of the corporation on the basis that this was a "payment" or financial benefit to the directors/trustees, notwithstanding that the *OCA* provided for such an indemnity with the consent of the corporation (section 80). If the directors resolved to indemnify themselves, the provision of a benefit for themselves would conflict with their duty to act in the best interests of the corporation. In *Harold*

G. Fox,[9] the Ontario Court confirmed that actions of charitable trustees which would conflict with their duties required court approval.

The *OCA* was amended in March, 1999 to specifically provide that a corporation referred to in section 1(2) of the *Charities Accounting Act* may not purchase liability insurance unless the corporation complies with that *Act* or the regulations made under that *Act*, or a court order is obtained (section 283(6)). Section 80, providing for the indemnity of directors and officers does not apply unless the charity complies with the regulations under the *Charities Accounting Act* or obtains a court order (*OCA*, subsection 133(2.2), added December, 2000, but retroactive to March 1, 1999).

The Regulations have at last been published. Provided the directors consider the factors set out in the regulations and maintain records demonstrating that they have considered these matters and have complied with the regulations, they can authorize the purchase of liability insurance and the indemnification of directors out of the assets of the corporation. Again, these provisions will apply to federally incorporated charities operating in Ontario. It should be remembered that because section 80 authorizes the indemnity "with the consent of the company, given at any meeting of the members", the bound resolution should be either presented at a meeting of members or ratified by resolution signed by all the members. Alternatively, the indemnity can be set out in a bylaw which is passed by the board and confirmed by the members.

(c) Auditors

Both federal and provincial nonprofit corporations require auditors (*OCA*, section 94; *CCA*, section 130). In Ontario only, the requirement to have an auditor can be dispensed with under *OCA* section 96.1 if the annual income is less than $10,000 and all the members consent, but this exemption does not apply to a corporation referred to in the *Charities Accounting Act* (*OCA* subsection 133(2.1)). In Ontario, the report of the auditor must be read at the annual meeting of the members of the nonprofit corporation and must be open to inspection by any member (*OCA*, section 97(3)). There is no equivalent requirement under the *CCA*. Under the *CCA*, auditors are entitled to attend meetings of members (*CCA*, section 132(5)). Statements by the auditor of a provincial or federal nonshare corporation are governed by the *Ontario Business Corporations Act*[10] (section 151(7)) and *Canada Business Corporations Act*[11] (section 172).

(d) Bylaws and Resolutions

Before March 1, 1999, the *OCA* provided that, subject to subsection 298(1), no business of the Corporation could be transacted by its directors except at a meeting of directors at which a quorum was present, except laws or resolutions signed in the first year by all the directors. After the first year the directors could not pass resolutions by signing them. Members could also sign resolutions during the first year (subsection 298(2)), and could confirm bylaws in writing at any time (subsection 298(3)). Subsection 1(1) of the *OCA* also

defined a special resolution as including one which is consented to in writing by all the members, therefore directors could only pass bylaws by written resolution and only in the first year and members could only act by signed resolution during the first year or if a special resolution was being passed. The *OCA* has now added subsections 298(1) and (2) which provide that any bylaw or resolution signed by all the directors or members is valid. Similarly, before March 1999 in Ontario directors had no authority to participate in meetings by telephone. Section 283(3.1) was added to allow this.

There are no equivalent provisions in the *CCA* which would allow the business of a federal nonprofit corporation to be conducted by written resolution or to have telephone meetings. Until recently the federal authorities viewed these things as matters of ministerial direction and the policy statement issued by Industry Canada allowed the bylaws to provide for written resolutions signed by all directors or members and for telephone meetings. Industry Canada recently changed its policy in this regard. The members of a federal nonprofit may only act by resolutions passed at meetings of members. Directors may act by written resolution only if the *CCA* does not require the resolution to be passed at a meeting.

As previously stated, section 155(2) of the *CCA* provides that the application for incorporation of a federal nonshare corporation must be accompanied by bylaws governing membership provisions, meetings, bylaw changes, appointment and removal of directors and those other items outlined in the subsection. Any changes in the bylaws must be approved by Industry Canada and notice of any bylaw changes must be published in the *Canada Gazette*. Although it is clear from the provisions of the *CCA* that only those bylaw changes specified in section 155(2) must be approved by Industry Canada, it is that Ministry which decides whether a particular bylaw comes within the ambit of the section and therefore all bylaw changes must be submitted. You can get a form of bylaw approved by Industry Canada and given an Identifier number. It can then be used for any number of incorporations and will reduce the time the Corporations Directorate takes to approve the application. Also, if the bylaw is revised, or a preapproved version with changes is used, a blacklined version can be sent. This will assist with the Directorate's review.

(e) Directors

Both the *OCA* (section 283) and the *CCA* (section 155) require that there be at least three directors in every nonshare capital corporation. In order to increase or decrease the number of directors in Ontario, a special resolution must be filed with the Companies Branch but it is no longer necessary to publish it in the *Ontario Gazette* (*OCA*, section 285). There are also no provisions provincially which set a minimum and maximum number of directors, as in the case of business corporations, although federally, the policy statement issued by Industry Canada allows for a range in number, with a minimum of three.

In Ontario, every director must become a member of the nonshare capital corporation within 10 days of being elected as director (subsections 286(1) and (2)). There is no such requirement under the *CCA*. There is also no requirement, as there is for business corporations, in either the federal or provincial statutes, that a majority of the directors of nonprofit corporations be resident Canadians.

Both federal and provincial nonshare capital corporations are required to keep a register of the names, addresses and occupations, not only of all current directors but of all past directors including their dates of election and the dates they ceased to act (*OCA* section 300 and *CCA* section 109).

(f) Borrowing Powers

The federal and provincial statutes governing share capital corporations state that unless the articles or bylaws provide otherwise, a business corporation has the power to borrow money and pledge its assets or give guarantees. Section 59 of the *OCA* and section 65 of the *CCA* provide that nonprofit corporations must pass bylaws in order to give the corporations the powers to borrow. In Ontario, such a bylaw must be confirmed by two-thirds of the votes cast at a general meeting of members (section 59(3)).

(g) Members' Issues

In business corporations, the holders of only five per cent of the voting shares can requisition the directors to call a meeting of shareholders. Under both the Ontario and federal legislation governing nonprofit corporations, it requires one-tenth of the members who are entitled to vote to requisition the directors to call such a meeting, however the policy statement issued by Industry Canada regarding federal nonprofit corporations states that the bylaws may provide that not less than five per cent of the voting members can requisition a special meeting of members.

As with directors' registers, the *OCA* (section 300) requires corporations to keep a members register of both current members and all of those who have been members within the past 10 years. The membership ledger must be alphabetical and contain the addresses of all of the members while they were members. Under the federal statute (section 109) the corporation must keep an alphabetical register of all current and all past members including their addresses and occupations.

(h) Head Office

In Ontario, the head office of the nonshare capital corporation must be in the municipality identified in the Letters Patent. Any change in this municipality requires a special resolution. It is no longer necessary to publish a change in head office in the *Ontario Gazette*. Federally, the location of the head office can be changed by bylaw amendment (requiring submission to Industry Canada and publication in the *Canada Gazette*) which must be confirmed by at least two thirds of the votes cast at a special general meeting of members called for the purpose of changing the head office.

VI. External Changes

(a) Supplementary Letters Patent

In Ontario, Supplementary Letters Patent are required to change the name of a nonprofit corporation, its objects, the municipal location of the head office and those other items enumerated in section 131 of the *OCA*. Throughout the *OCA* there are also several additional sections requiring Supplementary Letters Patent, such as those which allow the holding of meetings of members outside of Ontario (section 82(3)). Generally, the authorization required for Supplementary Letters Patent is a special resolution of members (passed by the directors and confirmed by two thirds of the votes cast at a general meeting of members or with the written consent of all members). Once the resolution is passed, the Supplementary Letters Patent must issue within six months. If the nonprofit corporation is also a charitable corporation, the approval of the Public Guardian and Trustee will be required before the Supplementary Letters Patent are submitted to the Companies' Branch. Supplementary Letters Patent are in the prescribed form (Form 3) which is available from the Companies' Branch.

Federally, changes to the Letters Patent of a nonshare capital corporation must be authorized by a bylaw which is confirmed by two thirds of the votes cast at a special general meeting called for the purpose of approving the bylaw. If the bylaws of the corporation so provide, the resolution confirming the bylaw can be passed in writing. There is also a six-month limitation for the filing of the Supplementary Letters Patent after the bylaw is passed. Notice must also be published by Industry Canada in the *Canada Gazette.*

Although there is no prescribed form for Supplementary Letters Patent for federal nonprofit corporations, there is a federal policy statement which requires an application, a statutory declaration of the secretary of the corporation confirming that the bylaw has been passed and providing the details thereof, and a copy of the bylaw.

(b) Extra-Provincial Registration

A nonprofit corporation incorporated in another jurisdiction or federally and wishing to operate in Ontario, need not obtain an Extra-Provincial licence but must file an Initial Notice/Notice of Change, Form 2 under the *Corporations Information Act*,[12] within 60 days of the start of operations. You must also include a copy of the face page of Letters Patent containing the corporation's name, date of incorporation and jurisdiction. The corporation is not required to appoint an agent for service in Ontario. If the charity is from outside Canada, it will be required to obtain an Extra-Provincial licence and appoint an agent for service. If an Ontario or federally incorporated charity wishes to operate in another province, it may be required to register as an extra-provincial corporation in that province and to appoint an agent for service. The legislation in each province of operation should be reviewed in order to determine the relevant requirements.

(c) Conversion to Company

Although there is a provision within the *OCA* (section 131) which allows the conversion of a nonprofit corporation to a company (a corporation with share capital), it may not be possible. The Director of the Companies' Branch has indicated that these provisions which remain in the *OCA* were actually transitional provisions. In at least one instance, the Director has refused to consent to a conversion and has indicated that he will not consent to any such application because corporations with share capital should be incorporated and governed by the provisions of the *OBCA*. If the director were to allow a conversion under the *OCA*, the corporation would become a share capital corporation under that statute, which is not deemed to be desirable. Presumably, the consent would not be withheld where the corporation continued to have objects of a social nature. In order to achieve a conversion to a business corporation which is not social in nature, it would be necessary to incorporate a separate corporation under the *OBCA*, transfer the assets and liabilities from the nonshare capital corporation to the business corporation (which will require the approval of the Public Guardian and Trustee if the nonshare capital corporation is charitable), and then the winding up of the nonshare capital corporation.

(d) Amalgamations

Under section 113 of the *OCA* any two corporations without share capital can amalgamate. Since there is no corresponding provision in the *CCA* it does not appear possible to amalgamate two federal nonshare capital corporations. In order to effect an amalgamation in Ontario, both corporations must have similar objects which may require Supplementary Letters Patent to amend the objects, before the amalgamation. The Ontario statute also requires an amalgamation agreement (subsection 113(2)) and the agreement must be approved by two thirds of the votes cast by the members of each of the corporations at a general meeting called for the purpose of approving the amalgamation. The secretary of each corporation must certify, on the agreement, that this has been done. The application for amalgamation is in a prescribed form (Form 11). If the amalgamation is of two charitable corporations, the approval of the Public Guardian and Trustee will be required.

(e) Voluntary Dissolution

In Ontario, a nonprofit corporation can voluntarily surrender its charter using the winding up procedures in Part VI of the *OCA*, or

by surrendering its charter under section 319 of the *OCA*. Generally, the wind-up procedures contained in Part VI are only used if the corporation's activities are complex enough to require a liquidator to deal with the assets or with the creditors. The wind-up must be authorized by a majority of the members at a general meeting called for the purpose of authorizing the wind-up and notice of the resolution must be published in the *Ontario Gazette* and filed with the Companies' Branch within 14 days. Once the liquidator is appointed, the corporation ceases to carry on business and the powers of the directors of

the corporation cease, however the corporation continues to exist until its affairs are wound-up (sections 236 and 254).

The more usual dissolution procedure if the affairs of the corporation are not complex, is to apply for the surrender of the charter of the corporation under section 319 of the *OCA*. The application to surrender the charter must be approved by a majority of the votes cast at a meeting of members called for the purpose of approving the dissolution or the written consent of all the members. The corporation also must have no debts, have provided for them, or must have obtained the consent of all creditors. If the corporation is a charity, consent of the Public Guardian and Trustee will be required. The Public Guardian and Trustee (as with any other corporate changes), may require an audit of the corporation's accounts prior to granting consent to the change.

An application for surrender of a charter is made on Form 9. Before the surrender will be effective, the corporation must have completed all its *Corporation Information Act* filings. Any property remaining in the corporation at the time of its surrender of charter is forfeit to the Crown (section 322) and therefore it is imperative that the corporation distribute its assets in accordance with its Letters Patent or bylaw (or equally to the members, if the Letters Patent or bylaws of a nonprofit are silent on this point (section 132(5)) before surrendering the charter. Like the shareholders of business corporations which are dissolved, to the extent that the members have received the property of the corporation they remain liable for the debts of the corporation (*OCA*, section 321).

A federal nonprofit corporation can be voluntarily wound up under the liquidation procedures in the *CCA* (section 211) or by voluntary dissolution under section 210 of the *CCA*. Again, the federal corporation must ensure that all of its filings are up to date. It must also supply Industry Canada with evidence that there are no assets remaining at the time of the application and there are no debts, or that creditors have been provided for or have consented. The evidence required to demonstrate that there are no debts or assets of the corporation must be provided by an auditor's certificate. Notice of the surrender must be published in a local paper and in the *Canada Gazette*. Although there is no official form of application, Industry Canada also publishes a policy statement governing voluntary surrender of charter. The surrender must be authorized by a bylaw passed by two thirds of the votes of the members cast at a meeting called for the purpose of authorizing the surrender. The application also requires an affidavit of the secretary of the corporation attesting to the passing of the bylaw and evidence of the publication of the notice of the intent to surrender. As under the Ontario statute, the *CCA* provides that, to the extent that the members have actually received assets of the corporation, they will remain liable to creditors (section 33).

(f) Revival

Under the *OCA* a corporation can be revived by filing a Form 10 but only where the dissolution was involuntary, i.e., for failure to file (section 317). All

outstanding filings under the *Corporations Information Act* must be made and if the corporation is charitable, the office of the Public Guardian and Trustee must consent. The provisions of the *CCA* are similar in that only a corporation which has been involuntarily dissolved can be revived (section 31). There is no prescribed form but an affidavit setting out the facts and the reasons for the revival must be submitted.

(g) Continuation

A nonprofit corporation of another jurisdiction can apply to be continued in Ontario if the laws of the incorporating jurisdiction permit it (sections 312 and 313). The application is made with Form 12. For an Ontario nonprofit corporation to continue in another jurisdiction, a Form 13 must be filed. If the corporation is charitable, the consent of the Public Guardian and Trustee is required. To continue in another jurisdiction, the corporation will also require a letter of consent from the Corporation's Tax Branch and the members of the corporation must authorize the continuance by special resolution. Once the corporation is continued in the other jurisdiction, it ceases to exist in Ontario.

There are no corresponding provisions in the *CCA* which, in effect, means that an Ontario nonprofit corporation cannot be continued as a federal nonprofit corporation and vice versa.

FOOTNOTES

1. An excellent publication for more substantive detail, including precedents and check lists, is Donald J. Bourgeois, *The Law of Charitable and Non-Profit Organizations*, 2nd ed., 1995, Buttersworth Canada Ltd., p. 256.
2. R.S.O. 1990, c.38, as amended.
3. R.S.C. 1970, C.32, as amended.
4. *Ontario Public Trustee* v. *Toronto Humane Society* (1987), 40 D.L.R. (4th) 111 (H.C.G.); *Harold G. Fox Education Fund* v. *Ontario Public Trustee* (1989), 34 E.T.R. 113 (H.C.) and cases referred to therein.
5. R.S.O. 1990, c.C.10, and R.S.O. 1990, c.C.8.
6. R.S.C. 1970, 2nd. supp., as amended.
7. See *OCA* sections 13-15; *CCA* sections 9, 25, 28 and 29, and corresponding regulations.
8. R.S.O. 1990, c.T.23, as amended.
9. *Supra*, footnote 4.
10. R.S.O. 1990, C.B.16.
11. R.S.C. 1985, c. C-44.
12. R.S.O. 1990 c.C.39.