

***Caution:***

*This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.*

## **CONSULTATION DRAFT**

### **ONTARIO REGULATION**

to be made under the

### **NOT-FOR-PROFIT CORPORATIONS ACT, 2010**

### **CORPORATIONS SOLE — APPLICATION OF ACT AND REGULATIONS**

#### **Application of Act**

**1.** The following provisions of the Act, as modified by section 2 of this Regulation, apply to corporations sole:

Proposed section 1 sets out provisions of the Act, as modified by proposed section 2 below, that would apply to corporations sole, some of which include:

- the definitions in subsection 1(1) of the Act, as applicable;
- the provision addressing conflict with other law in section 5 of the Act;
- the capacity of a corporation in section 15 of the Act which provides that a corporation has the capacity, and subject to the Act, the rights, powers and privileges of a natural person; and
- the requirement for annual financial review under section 77.

1. Subsection 1 (1) (Definitions), as applicable.
2. Section 2 (Interpretation re period of days).
3. Section 3 (Interpretation re corporate relationships).
4. Section 5 (Conflict with other law).
5. Subsections 10 (2) (Changing corporation number) and (4) (Assignment of corporation numbers to bodies corporate).
6. Section 15 (Capacity, etc., of a natural person).

7. Subsection 40 (1) (Directors' liability to employees for wages, etc.).
8. Subsections 46 (1) (Indemnification of directors and officers) and (6) (Insurance) and clause 46 (7) (a) (Exception — charitable corporation).
9. Subsection 69 (1) (Qualifications), clause 69 (2) (a) (Independence) and subsection 69 (4) (Duty to resign).
10. Section 70 (Auditor, person conducting review engagement ceasing to hold position).
11. Subsections 72 (1) (Filling vacancy, By directors) and (4) (Unexpired term).
12. Subsections 75 (1) (Auditor's right to attend meetings), (4) (Statement of auditor), (7) (Statement from previous auditor), (8) (Exception) and (9) (Effect of non-compliance).
13. Section 77 (Annual financial review).
14. Subsection 78 (1) (Report on financial statements).
15. Subsection 79 (1) (Obligation of directors, etc., to give information).
16. Section 80 (Audit Committee).
17. Section 82 (Qualified privilege — defamation).
18. Section 83 (Approval of annual financial statements).
19. Section 87 (Ownership of property).
20. Subsection 89 (1) (Distribution of property, etc.).
21. Subsections 92 (1) (Corporate records to be kept) and (3) (Retention of accounting records).
22. Section 92.1 (Register of interests in land in Ontario).
23. Subsections 93 (2) (Same) and (2.1) (Same).
24. Subsection 95 (1) (Members', creditors' access to records).
25. Subsection 98 (1) (Financial statements to be kept).

26. Subsection 99 (1) (Access to records refused — court authorization).
27. Section 100 (Form of records).
28. Section 174 (Investigation).
29. Section 175 (Order to enter a dwelling).
30. Section 176 (Powers of inspector).
31. Section 177 (Court directions on investigation).
32. Section 178 (Right to counsel).
33. Section 179 (Exchange of information).
34. Section 180 (Privilege).
35. Section 181 (Definition).
36. Section 182 (Complainant).
37. Section 191 (Compliance or restraining order).
38. Section 192 (Appeals).
39. Subsections 193 (1) (Offence), (2) (Offences — false or misleading statements), (4) (Directors and officers) and (5) (Due diligence).
40. Section 194 (Order to comply).
41. Section 195 (Definitions).
42. Subsections 196 (1) (Notice, etc., given to members and directors), (2) (Named director presumed to be director) and (4) (Application to court).
43. Section 197 (Notice, etc., given to corporation).
44. Section 200 (Search, etc., of documents kept by Director).
45. Section 203 (Form of Director's records).

46. Section 204 (Copy of document acceptable).
47. Section 204.1 (Filing by fax).
48. Section 205 (Affidavits, etc., required by Director).
49. Section 206 (Delegation of Director's duties and powers).
50. Section 206.1 (Director's certificates, etc.).
51. Section 206.2 (Agreements with authorized persons).
52. Section 206.3 (Property of Crown).
53. Subsection 208 (1) (Minister's regulations).
54. Section 209 (Fees).
55. Subsection 210.2 (1) (Requirements established by Director).

### **Modifications to Act**

**2.** (1) For the purposes of section 1, the provisions of the Act referred to in that section apply with the modifications set out in this section and any other necessary modifications.

Proposed section 2 sets out the proposed modifications to specific provisions that are proposed to apply to corporations sole outlined above in proposed section 1, where necessary, some of which include:

- Adding a definition for “office holder” in subsection 1(1) to refer to the individual whose office is the corporation sole;
- Modifying subsection 72(1) so that the vacancy of the position of auditor shall be filled immediately by the office holder, rather than the directors;
- Modifying subsection 77(1) to require an auditor of a corporation sole to examine the financial statements as is necessary to enable the auditor to report on them; and
- Modifying subsection 92(1) to require a corporation sole to prepare and maintain accounting records sufficient to enable the office holder to ascertain the financial position of the corporation and to prepare and maintain a register of ownership interest in land complying with section 92.1.

(2) Subsection 1 (1) of the Act is modified by adding the following definition:

“office holder” means the individual whose office is the corporation sole; (“titulaire de charge”)

(3) Subsection 40 (1) of the Act shall be read as follows:

**Corporation sole's liability to employees for wages, etc.**

**40.** (1) The corporation sole is liable to the employees of the corporation for all debts not exceeding,

- (a) six months' wages for services performed for the corporation; and
- (b) the vacation pay for not more than 12 months under the *Employment Standards Act, 2000* or under any collective agreement entered into by the corporation.

(4) Subsections 46 (1) and (6) of the Act shall be read as follows:

**Indemnification of office holder**

**46.** (1) A corporation sole may indemnify the office holder of the corporation, a former office holder of the corporation or an individual who acts or acted at the corporation's request in a managerial capacity for the corporation against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with the corporation.

. . . . .

**Insurance**

(6) A corporation sole may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual in the individual's capacity as the office holder of the corporation or in the individual's managerial capacity for the corporation.

(5) Subsections 69 (1) and (4) of the Act shall be read as follows:

**Qualifications**

**69.** (1) In order to be an auditor of a corporation sole, a person must be permitted to conduct an audit under the *Public Accounting Act, 2004* and be independent of the corporation.

. . . . .

**Duty to resign**

(4) An auditor who is disqualified under this section shall resign immediately after becoming aware of the disqualification.

(6) Section 70 of the Act shall be read as follows:

**Auditor ceasing to hold position**

**70.** (1) An auditor of a corporation sole ceases to hold that position when the auditor dies, resigns or is dismissed by the office holder of the corporation.

**Effective date of resignation**

(2) A resignation of an auditor becomes effective at the time the resignation is given to the corporation sole or at the time specified in the resignation, whichever is later.

(7) Subsections 72 (1) and (4) of the Act shall be read as follows:

**Filling vacancy****By office holder**

**72.** (1) The office holder shall immediately fill a vacancy in the position of auditor.

.....

**Unexpired term**

(4) An auditor appointed to fill a vacancy may act for the unexpired term of the auditor's predecessor.

(8) Subsections 75 (1), (4) and (7) of the Act shall be read as follows:

**Auditor's right to meet with office holder**

**75.** (1) An auditor is entitled to meet with the office holder within 30 days after asking to do so and to be heard on matters relating to the auditor's duties.

.....

**Statement of auditor**

(4) An auditor is entitled to give the corporation sole a statement giving reasons for resigning.

.....

**Statement from previous auditor**

(7) No person shall accept an appointment or consent to be appointed as an auditor of a corporation sole to replace an auditor who has resigned, been dismissed or whose term of office has expired or is about to expire or whose office has been declared vacant until the person has requested and received from that auditor a statement of the circumstances and the reasons, in that auditor's opinion, for the auditor's replacement.

(9) Section 77 of the Act shall be read as follows:

**Annual financial review**

**77.** (1) An auditor of a corporation sole shall examine the financial statements as is necessary to enable the auditor to report on them.

**Same**

(2) The auditor shall report on the financial statements in accordance with the regulations and with generally accepted auditing standards.

(10) Subsection 78 (1) of the Act shall be read as follows:

**Report on financial statements**

**78.** (1) After conducting an audit, the auditor shall report on the financial statements to the office holder.

(11) Subsection 79 (1) of the Act shall be read as follows:

**Obligation of office holder, etc., to give information**

**79.** (1) The auditor of a corporation sole may, if they are of the opinion that it is necessary in order to conduct the audit of the corporation and to make the report required under subsection 78 (1), demand that any present or former office holder, employee, servant or agent of the corporation give the auditor any information and explanations and access to records, documents, books, accounts and vouchers of the corporation or of any of its subsidiaries.

(12) Section 80 of the Act shall be read as follows:

**Audit committee**

**80.** (1) A corporation sole may have an audit committee.

**Auditor's attendance**

(2) The corporation sole shall give the auditor notice of the time and place of any meeting of the audit committee. The auditor is entitled to attend the meeting at the

expense of the corporation and be heard, and shall attend every meeting of the committee if requested to do so by one of its members.

### **Calling meeting**

(3) The auditor or a member of the audit committee may call a meeting of the committee.

(13) Section 83 of the Act shall be read as follows:

### **Approval of annual financial statements**

**83.** (1) The office holder shall approve annual financial statements of the corporation sole.

### **Same**

(2) The approval of the office holder must be evidenced by his or her signature.

### **Duty of committee**

(3) If the corporation sole has an audit committee, the audit committee shall review the financial statements of the corporation before they are approved by the office holder.

### **Same**

(4) A corporation sole shall not issue, publish or circulate copies of the annual financial statements unless they are,

- (a) approved and signed in accordance with subsections (1) and (2); and
- (b) accompanied by the audit report.

(14) Subsection 89 (1) of the Act shall be read as follows:

### **Distribution of property, etc.**

**89.** (1) No part of a corporation sole's profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to the office holder except in furtherance of the corporation's activities.

(15) Subsections 92 (1) and (3) of the Act shall be read as follows:

### **Corporate records to be kept**

**92.** (1) A corporation sole shall prepare and maintain records containing,

- (a) accounting records adequate to enable the office holder to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis; and
- (b) a register of ownership interests in land complying with section 92.1.

. . . . .

### **Retention of accounting records**

(3) Subject to any other Act or rule of a taxing authority that requires a longer retention period, a corporation sole shall retain the accounting records referred to in subsection (1) for six years.

(16) Subsections 93 (2) and (2.1) of the Act shall be read as follows:

### **Location of corporate records**

(2) A corporation sole shall keep the records described in clause 92 (1) (a) at the corporation's registered office or another place designated by the office holder.

### **Same**

(2.1) A corporation sole shall keep the register described in clause 92 (1) (b) at the corporation's registered office.

(17) Subsection 95 (1) of the Act shall be read as follows:

### **Creditors' access to records**

(1) A creditor of a corporation sole may examine and, on payment of a reasonable fee, take extracts from the records in the register referred to in clause 92 (1) (b) during the corporation's regular office hours.

(18) Subsection 99 (1) of the Act shall be read as follows:

### **Access to records refused — court authorization**

(1) On the application of a corporation sole, the court may authorize the corporation to refuse to allow access to any records the corporation is required to keep under this Part or to give any information that the corporation is obligated to allow access to or to give under this Part, in whole or in part and on any terms that the court thinks fit, if the court decides that allowing the access or giving the information would be detrimental to the corporation.

(19) Subsection 174 (1) of the Act shall be read without “member or” in the portion before clause (a).

(20) Subsection 174 (2) of the Act shall be read as follows:

### **Grounds**

(2) The court may make an order on an application under subsection (1) only if it appears to the court that,

- (a) the activities of the corporation sole or of any of its affiliates are or have been carried on with intent to defraud any person;
- (b) the activities or affairs of the corporation or of any of its affiliates are or have been carried on or conducted, or the powers of the office holder are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a debt obligation holder;
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, activities or affairs of the corporation or of any of its affiliates have acted fraudulently or dishonestly.

(21) Section 182 of the Act shall be read as follows:

### **Complainant**

**182.** The following persons may make an application under section 191 in respect of a corporation sole and if they do so, are referred to in that section as a “complainant”:

1. The office holder of the corporation, or a member, officer or director of any of its affiliates.
2. A person who not more than two years previous ceased to hold a position referred to in paragraph 1.
3. Any other person who, in the discretion of the court, is a proper person to make an application under this Part.

(22) Section 191 of the Act shall be read as follows:

### **Compliance or restraining order**

**191.** On the application of a complainant or a creditor of a corporation sole, the court may make an order directing the corporation or the office holder or any employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of the corporation to comply with this Act, the regulations or the articles of the corporation or restraining any such person from acting in breach of them and may make any further order that it thinks fit.

(23) Subsection 193 (4) of the Act shall be read as follows:

### **Office holder**

(4) If a corporation sole commits an offence under this section, any office holder of the corporation who authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both, whether or not the corporation has been prosecuted or convicted.

(24) Subsections 196 (1) and (2) of the Act shall be read as follows:

### **Notice, etc., given to office holder**

**196.** (1) A notice or other document required or permitted by this Act or the regulations to be given to the office holder of a corporation sole may be given to the office holder at his or her latest address as shown in the records of the corporation or in the most recent notice or return filed under the *Corporations Information Act*, whichever is the more current.

### **Named director or officer presumed to be office holder**

(2) An individual named as a director or officer in the most recent return or notice filed under the *Corporations Information Act* is presumed for the purposes of this Act to be the office holder of the corporation sole.

### **Application of General Regulation under the Act (name is subject to change)**

**3.** The following provisions of the General Regulation under the Act (name is subject to change) made under the Act apply to corporations sole, with necessary modifications:

1. Section 5 (Report on financial statements).
2. Section 6 (Financial statements).
3. Paragraphs 7, 9 and 14 of subsection 8 (1) (Information in writing).
4. Section 10 (Notice of appointment to auditor, person conducting review engagement).

5. Section 11 (Notice, etc., to member or director).
6. Section 12 (Notice, etc., to corporation).

Proposed section 3 lists specific provisions of the General Regulation under the Act (name is subject to change) that would apply to corporations sole, some of which include:

- Proposed section 6 of that proposed regulation that set out the various statements to be included in the financial statements referred to in Part VIII of the Act (e.g., a statement of financial position or a balance sheet, etc.) and provide the generally accepted accounting principles that must be used for preparing these financial statements; and
- Proposed section 12 would address the method of giving a notice or other document to a corporation that is required to be given by a person other than the Director, and deem such notice or document to have been received by the corporation on the fifth day after it was sent.

#### **Application of Names and Filings Regulation under the Act (name is subject to change)**

4. The following provisions of the Names and Filings Regulation under the Act (name is subject to change) made under the Act apply to corporations sole, with necessary modifications:

1. Section 40 (Paper or electronic format).
2. Section 43 (Public servants who may sign).

Proposed section 4 lists the provisions of the Names and Filings Regulation under the Act (name is subject to change) that would apply to corporations sole with necessary modifications:

- Proposed section 40 of the Regulation dealing with articles, applications and other documents and information that may be filed with the statutory Director in paper or electronic format.
- Proposed section 43 of the Regulation dealing with public servants who may sign specified documents.