



SPORT4ONTARIO'S ORAL PRESENTATION TO THE STANDING COMMITTEE ON SOCIAL POLICY

BILL 65, An Act to Revise the Law in Respect of Not-for-Profit Corporations

August 23, 2010 – 2 p.m.

My name is Margaret Emin and I am the volunteer Chair of SPORT4ONTARIO. We are a non-profit organization dedicated to building capacity within the nonprofit sport sector in Ontario. In essence, we educate, collaborate, communicate, advocate and innovate.

SPORT4ONTARIO applauds the government of Ontario for taking the lead to modernize the legal framework governing Ontario's nonprofit organizations. SPORT4ONTARIO was pleased to submit written responses to all three consultation papers.

In Canada, sport organizations exist at the national, provincial, regional and the community or grass-roots levels.

Although the majority of the media attention focuses on our national athletes and the world competitive stage, e.g., the 2010 Vancouver Winter Olympic/Paralympic Games and the upcoming 2015 Pan/Parapan American Games, sport happens, for the most part, at the community level. And regardless of the level, sport is organized, supported and enabled largely by volunteers and nonprofit organizations.

I'd like to provide you with a brief snapshot of the Ontario sport and recreation sector:

- There are about 7,500 sport and recreation organizations, representing 16% or the second largest component of Ontario's nonprofit sector behind only religious organizations
- 70% serve a single neighbourhood, city, town or rural municipality
- 46% serve children and youth
- 71% have been in operation for 20 years or more
- They typically have more modest financial resources than other nonprofit organizations, are often financially vulnerable and at the community level, least reliant on government funding
- Annual revenues total \$2.5 billion
- However, 72% report annual revenues of less than \$100,000, with 45% have annual revenues less than \$30,000
- With fewer financial resources, volunteers are key — but there are challenges recruiting the volunteers we need, including Board members
- Financial support from donors and foundations is low, at best, because sport organizations at the provincial and community level are typically ineligible for charitable status; although 19% of Ontario Sport and Recreation organizations are registered charities, very few of these are sport organizations
- The sector employs about 44,000 (full-time employees), with 46% of those employed on a part-time basis
- About 75% of sport organizations have no staff and are entirely dependent on volunteers.
- The sector benefits from the energy, time, and leadership of over 1.1 million (aged 15 and older) volunteers who contribute a total of 122 million volunteer hours

- As to the reach and scope of nonprofit sport organizations in Ontario, it varies greatly. For example:
 - Provincially, membership ranges from 17 clubs to over 850 clubs and 1000 individual members to over 500,000 members.
 - At the community level, membership ranges from 15 individuals (in an archery club) to tens of thousands of youth in a soccer or hockey club.
- Collectively sport and recreation organizations report 17 million members. Clearly Ontarians are members of more than one sport and recreation organization.

I hope this brief overview has given you a greater understanding of the sport and recreation sector – our numbers, our scope and reach and our significant volunteer support and establishes the context for my comments with respect to Bill 65.

Is Bill 65 important to the sport sector? Yes! Any attempt to modernize and stream-line the legislation with respect to not-for-profit incorporation and governance is most welcome and we support the essence of this proposed legislation.

But is Bill 65 all that it can be? So close but not quite! But that's why we're here. This is a pivotal moment for Ontario's nonprofit sector, for Ontario's nonprofit sport sector.

As to the legislation, our written submission speaks to all aspects of Bill 65.

We endorse the Ontario Nonprofit Network's submission on Bill 65, with a few exceptions, and are pleased to note that we provided input for their submission.

Today I would like to focus on a few key sections of Bill 65 that could significantly impact Ontario's nonprofit sport sector.

First – Public Benefit Corporations

We support the new designation – Public Benefit Corporation or PBC – and the PBC definition.

We acknowledge that some sport and recreation organizations are 'member benefit' corporations in that upon dissolution of the corporation, these organizations will distribute their assets and property to their respective members.

The Issue:

Bill 65 proposes that to qualify as a Public Benefit Corporation, certain criteria must be met.

We submit that this current definition results in an unintended outcome. The majority of Ontario's sport organizations would not meet these criteria and therefore would not qualify as Public Benefit Corporations. Yet it would be hard to argue that participation in the physical activity of sport for our children and youth and in many cases the broad spectrum of our population is not a benefit when you consider the physical and therefore positive health impact, but also the building of citizenship skills such as team-work, cooperation, leadership, decision-making, problem-solving, enhanced communication, personal management and administrative skills.

Based on this, we would argue that sport organizations are indeed public benefit organizations and that the need for and/or dependency on government funding should in no way determine an organization's Public Benefit designation.

In addition, as most sport organizations do not have charitable status, donations from individuals and foundation grants are often out of their reach or extremely complicated to secure, if at all.

Our Recommendation: That receipt of government funding and/or gifts or donations has no place in the definition of Public Benefit Corporations and quite frankly penalizes self-sustaining sport organizations and should therefore be removed.

The intent to serve and benefit the public should be the defining criterion. We further recommend that non-profit organizations should have the right to opt-in to be a Public Benefit Corporation, with no ability to revoke this decision.

Second– Standard of Financial Review

The Issue: Increasing public scrutiny of not-for-profit organizations coupled with revised and strengthened audit standards has resulted in costly and more complex annual audits. While we support this call for increased transparency and accountability, we submit that accountability must be reasonable and commensurate with the risk. The \$100,000 threshold would create an unnecessary and excessive administrative and financial burden for a significant percentage of sport organizations.

Our Recommendation: We believe that Public Benefit Corporations and non-Public Benefit Corporations with annual revenues of under \$500,000 should both be permitted to dispense with an audit in favour of a financial statement or review engagement. This is in keeping with the Canada Revenue Agency's recommendation to charities that an annual audit be performed if revenues surpass \$500,000.

Third – Directors and Membership Status

Currently Bill 65 states that that at least two thirds (2/3) of directors on a nonprofit corporation must be members of the corporation.

Issue: We submit that Directors duties (duty of care, etc) are identical, regardless of membership status. We note that again the Saskatchewan Non-Profit Corporations Act (1995) has no such provision.

Our Recommendation: Delete this requirement from Bill 65.

Fourth – Non-Voting Members

When reading this section of Bill 65, I thought of the 4 year-old going off to his/first first swimming or skating lesson and by virtue of registering for the swim or skating program is a non-voting member of the respective organization. To suggest that this child, or the parent or guardian of this child, should have voting rights is a stretch.

Organizations often have different classes of membership with one or some but rarely all membership classes having voting rights.

In the sport sector, at both the federal and provincial level, membership numbers are a major determinant of government funding levels. As such, program fees often include or require membership in said organization. The sport sector must report all members, including children and youth, who have paid a fee and receive a service or benefit.

Allowing a non-voting member to vote when that member has an economic interest makes sense. But where there is no economic interest, there is no policy rationale to justify conferring voting rights to non-voting members.

Our Recommendation: That voting rights are conferred on non-voting members only where the member has an economic interest in the corporation.

Fifth – Use of Proxies

The Issue: It is our belief that proxies can play an important role but mandatory proxy voting is not desirable. Rather, the decision to allow or not to allow proxy voting along with who qualifies to be a proxy holder should be the decision of the organization. We note that proxy voting is not mandatory under the Canada Not-for-Profit Corporations Act or Saskatchewan’s Non-Profit Corporations Act, 1995.

Our recommendation: Amend Bill 65 to recognize that proxy voting is mandatory unless otherwise provided for in the articles or by-laws and subject to restrictions contained therein.

And finally – Directors’ Liability

The Issue: Today’s increasingly litigious environment is one of the many reasons it is often difficult to recruit and retain volunteers to serve as Board Members.

Bill 65 makes no provisions for a liability shield for directors and officers of nonprofit organizations.

Our Recommendation: That an additional clause be inserted into this legislation to limit the liability exposure of directors and officers, similar to Saskatchewan’s Non-Profit Corporations Act (1995), which is in our opinion the most progressive provincial legislation dealing with director and officer indemnification and limited liability.

Conclusion:

Understanding that on occasion, the appointment of a new Minister can delay processes such as this, we urge you to maintain the current momentum and work with the nonprofit sector to fine-tune and pass expeditiously this new piece of legislation that meets both the Ontario government’s goals and the nonprofit sectors’ needs.

We further request the following:

- That, wherever possible, plain language is used in this legislation to ensure Ontario’s diverse population can easily understand their obligations with respect to this legislation;
- That this legislation be made readily available in those languages deemed necessary to serve all Ontarians, beyond our two official languages
- That, once passed, a guide to this legislation be developed and made available, similar to that in place in Saskatchewan.

Thank you again for affording us the opportunity to present our views on Bill 65.