

About SPORT4ONTARIO

SPORT4ONTARIO is a non-profit organization dedicated to building capacity in sport organizations across Ontario and the promotion of physical activity through sport in Ontario. Our membership includes Provincial Sport and Multi-Sport Organizations, Recreation Organizations, Regional Sport Organizations and Community Clubs. Together with our members and key stakeholders, we represent the 2.5 million Ontarians who are registered members of provincial sport and multi-sport organizations.

SPORT4ONTARIO provides the collaborative environment, knowledge and resources to build capacity and drive leadership excellence in the Ontario sport community through education, advocacy, interaction, research and innovation.

SPORT4ONTARIO creates member value and benefits that contribute to a stronger sport community for all Ontarians.

SPORT4ONTARIO was provincially incorporated as the Provincial Sport Organizations Council in 1998 and has been setting the tone for accountability within the non-profit sport sector as well as accountability to the sector since that time.

In building capacity, SPORT4ONTARIO remains a strong voice to both funding partners and government by assisting government in understanding the concerns of the sport sector with respect to policy, programming, capacity and funding. Our network of members reaches all aspects of the non-profit sport sector and our ability to respond to and engage with the sport sector as a collective makes membership with SPORT4ONTARIO a valuable and essential part of effective sport management and advocacy.

VALUES: In all our actions as an organization,

- We are **member-driven** and **consultative**, we “serve, never self-serve”
- We are **responsive to all** sports organizations in Ontario , not just our Members
- We are **accountable and transparent**, especially with regard to governance and financial matters
- We exhibit a commitment to **equity and diversity**
- We are **reliable and professional**
- We are **flexible**, welcoming innovative ideas and approaches
- We display a commitment to **teamwork**, believing that more can be achieved by working together in partnership than can be achieved singularly.

SPORT4ONTARIO
102-3 Concorde Gate,
Toronto, Ontario M3C 3N7
416 426-7310
www.sport4ontario.ca
memin@sport4ontario.ca



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To: Members of the Standing Committee on Social Policy

SPORT4ONTARIO is pleased to submit our written submission on Bill 65, *An Act to Revise the Law in Respect of Not-for-Profit Organizations*.

We applaud the government of Ontario for taking the lead to modernize the legal framework governing Ontario's nonprofit organizations. Bill 65 is unquestionably the culmination of extensive work and consultations that have taken place between the government and nonprofit organizations across Ontario since 2008. SPORT4ONTARIO was pleased to submit written responses to all three consultation papers.

Bill 65 represents an important milestone for Ontario's nonprofit sector. This new act will benefit Ontario's 7,500 sport and recreation organizations and by extension the individuals and organizations that over 2.5 million Ontarians rely upon for services sport organizations provide through our volunteers, coaches, officials, employees and members.

Overall, Bill 65 provides a clear, modern set of rules that organizations will find much easier to use and comply with. With approximately seventy-five percent (75%) of Ontario sport and recreation organizations operating with no paid staff, this legislation is most welcome.

SPORT4ONTARIO participated in the cross-sectoral discussions regarding Bill 65 led by the Ontario Nonprofit Network and we endorse the Ontario Nonprofit Network's written submission on Bill 65, *An Act to Revise the Law in Respect of Not-for-Profit Organizations*.

We are pleased to provide input on this important legislation and look forward to the enactment of Bill 65.

Respectfully submitted,

Margaret Emin
Chair, SPORT4ONTARIO
416 426-7310

A Few Facts about Ontario's Sport and Recreation Sector

The following data with respect to Sport and Recreation organizations is based on the definition of non-profits used by the International Classification of Non-Profit Organizations (Salamon & Anheier, 1997).

Under this definition, Sports and Recreation organizations include:

- *Sport organizations* – organizations that promote amateur Sport, training, fitness, wellness, and sporting competitions and events;
- *Recreation and social clubs* – organizations that provide recreational facilities and services, including playground associations, country clubs, and leisure clubs; and
- *Service clubs* – organizations such as the Lions, Rotary Club, and Kiwanis, which provide services to members and local communities.

In addition, this following data has been taken from the 2007 Research Report by Imagine Canada titled *Understanding the Capacity of Ontario Sport and Recreation Organizations: A synthesis of findings from the National Survey of Nonprofit and Voluntary Organizations and the Canada Survey of Giving, Volunteering, and Participating*.

- Ontario's 7,500 Sport and Recreation organizations constitute the second most common type of nonprofit and voluntary organization in the province after faith-based organizations
- Ontario Sport and Recreation organizations have annual revenues of \$2.5 billion
- 45% of Ontario Sport and Recreation organizations have annual revenues of less than \$30,000.
- An additional 27% have annual revenues of between \$30,000 and \$99,999
- Only 19% of Ontario Sports and Recreation organizations are registered charities.
- 70% of Ontario Sport and Recreation organizations serve primarily the neighbourhood, city, town, or rural municipality in which they are located.
- 46% of Ontario Sport and Recreation organizations that deliver products or services directly to people serve primarily children or young people; 27% serve primarily the general public.
- Ontario Sport and Recreation organizations have a total membership of almost 17 million people and 40,500 organizations.¹
- More than 1 million Ontarians (11% of the population aged 15 and older) volunteered an average of 108 hours each for Sport and Recreation organizations in 2004, making Sport and Recreation organizations the fourth most popular type of organization to volunteer for behind Education and Research, Religious, and Social Services organizations (see Figure 28).
- In total, these volunteers contributed nearly 122 million hours, or the equivalent of roughly 63,000 full-time jobs.
- 71% of Ontario Sport and Recreation organizations have been in operation for 20 years or more.
- Collectively, Ontario Sport and Recreation organizations provide employment to almost 44,000 people. Just over two fifths (41%) are employed full-time, and the rest (59%) are employed part-time.
- Three quarters (75%) of Ontario Sport and Recreation organizations operate with no paid staff

¹ Note that organizational membership includes both incorporated and unincorporated "grassroots" organizations and may include organizations from outside Ontario. It is not possible to infer from this number how many unincorporated Sports and Recreation organizations there may be in Ontario in addition to the 7,500 incorporated or otherwise registered organizations reported by the 2003 NSNVO.

- A small number of Ontario Sport and Recreation organizations (the 6% with annual revenues of \$1 million or more) account for 75% of total Sport and Recreation revenues in the province.
- Ontario Sport and Recreation organizations receive more than half (55%) of their revenues from earned income and more than one third (36%) from gifts and donations (see Figure 12). They receive comparatively small amounts from government (7%) and other sources (1%).
- Sport and Recreation organizations are twice as likely as other organizations in Ontario to depend on earned income — 82% of Ontario Sport and Recreation organizations derive 50% or more of their revenues from earned income, compared to 39% of other organizations.
- More than 2 million Ontarians — 20% of the population aged 15 and older — donate to Sport and Recreation organizations.
- The average annual donation to Sport and Recreation organization is \$41.
- Sport and Recreation organizations account for 2% of all the money donated in Ontario.
- 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 to tens of thousands.

Bill 65: Highlights & Recommended Amendments

Introduction

It would appear that government, the nonprofit sector and in particular the nonprofit *sport* sector are in agreement as to expectations for organizations serving the public good. This is a pivotal opportunity to address government's mandate to modernize the legal framework governing the Ontario nonprofit sector and to serve the sectors' need.

While this legislation offers many much needed changes, further changes are required to ensure the legislation meets the goals and needs of both entities.

This submission addresses the following areas:

1. Background and context of Bill 65: Why Bill 65 Matters to the nonprofit *sport* sector;
2. Highlights of Bill 65 which are broadly supported;
3. Key changes required to improve the existing draft; and
4. Other recommended amendments to meet the sector's needs.

1.0 Background: Why Bill 65 Matters to the Ontario Nonprofit *Sport* Sector

Sport is an integral part of the daily life of Ontarians. To our knowledge, the sport sector is represented in every community in Ontario. In the past fifty years, our sector has grown significantly. The data listed on pages four (4) and five (5) of this submission speak to the size, scope and in some cases challenges faced by the Ontario nonprofit *sport* sector.

In Canada, sport organizations exist at the national, provincial, regional and the community or grass-roots level. Although the majority of the media attention focuses on our national athletes and the world competitive stage, i.e. 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.

Bill 65 will positively impact Ontario's sport sector in many ways including but not limited to:

- streamlining of the incorporation process including the provision for default by-laws
- ease of making changes to by-laws;
- greater director accountability;
- updated conflict of interest rules;
- expansion of member rights by providing greater transparency for financial statements and access to records;
- use of modern technology;
- audit and review engagement exemptions for smaller organizations;
- ability to engage in commercial activities that support a non-profit's purposes; and
- the creation of a new 'brand', a new designation – the Public Benefit Corporation.

We commend the Ontario Government for the collaborative approach it has taken throughout this modernization initiative to develop new legislation governing Ontario's nonprofit organizations. This is policy dialogue at its best!

2.0 Highlights of Bill 65

2.1 New Designation: Public Benefit Corporation

We strongly support the creation of the new designation Public Benefit Corporation (PBC).

Membership is central to Sport and Recreation organizations; almost all organizations report having members.

Sport and Recreation organizations are twice as likely as other organizations to say that their members are the primary beneficiaries of organizational activities. These factors together have led to a common perception that Sport and Recreation organizations are primarily focused on delivering member benefits rather than public benefits.

Although membership is an important focus for Sport and Recreation organizations, they are no more likely than other Ontario nonprofit organizations to place restrictions on who can become members, and the populations most commonly served by organizations delivering services directly to individuals are broadly defined, such as children and youth and the general public.

To quote the Ontario Nonprofit Network's written submission:

Across the sector, funders, and public, the same core 'criteria' is identified when asked what is required of a nonprofit to fulfill the notion of public benefit:

- *The organization has a public purpose and mission;*
- *The organization operates for the public good not personal gain.*
- *The organization reinvests any excess revenue in its public purpose; and*
- *The organization retains its assets in the public domain for the public good*

Charities, the most well known of the public benefit organizations, are regulated by Canadian Revenue Agency to ensure they meet the above criteria, but the ~40% of nonprofit organizations that are not charities have no similar regulation even though they, and the public, often believe they do.

*... the new designation '**Public Benefit Corporation**' (PBC), in Bill 65, will serve to ... enhance the public trust so critical to the sector's work. Funders and the broader public can have confidence that their investment in a local public benefit corporation will support their community for the long haul.*

2.2 Supporting Social Enterprise & Earned Income

Again, we support the following position of the Ontario Nonprofit Network:

*Bill 65 recognizes the ability of nonprofits **to engage in commercial activities as long as revenues are used to forward public benefit objectives**. This is a significant endorsement for social enterprise or ‘earned income’ activities by nonprofits, which is increasingly pertinent as more and more nonprofits in Ontario seek out alternative streams of revenue.*

Reports have documented the stagnant or shrinking levels of donations and government grant funding over the last fifteen years, which has been felt acutely by the small and mid-sized nonprofits and charities. This squeeze has only tightened in the wake of the recent economic downturn, with increased demand for the services many nonprofits offer while facing actual and anticipated funding cuts, as documented by provincial surveys. Considering the present financial environment for the nonprofit sector, it can be anticipated that more nonprofits and charities will be seeking to ‘earn’ more income outside traditional income streams of donations and grants. This provincial legislation reflects the realities on the ground today and will support the sector as it evolves in response to opportunities and stresses in their funding landscape.

3.0 Critical Amendments Required to Bill 65

We support the Ontario Nonprofit Network’s recommendations with respect to the following three (3) critical amendments required to further strengthen Bill 65:

- defining Public Benefit Corporation;
- preserving assets for public good; and
- ability to access community bonds with oversight.

3.1 Defining Public Benefit Corporation

We are pleased to support the new designation – Public Benefit Corporation or PBC.

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. We do not speak on behalf of ‘member benefit’ corporations.

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 submit that sport organizations are indeed public benefit organizations and that the need for and/or dependency on government grants should in no way determine an organization's Public Benefit designation.

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

We also envision issues with respect to annual PBC status. It appears that an organization's PBC status could change from year to year. For example one year the organization may require an audit and the next year not. This may, in our opinion, result in confusion for many of Ontario sport organizations' boards of directors and members.

Our Recommendation: That receipt of government funding and arm's length gifts or donations have no place in the definition of Public Benefit Corporations and penalizes self-sustaining sport organizations and should therefore be removed.

The intent to serve 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.

In addition, we fully endorse the following position and recommendation with respect to Public Benefit Corporations as stated in the written submission of the Ontario Nonprofit Network.

It is very important that the Public Benefit Corporation (PBC) is clearly and appropriately defined to meet its full utility. The designation will also entail certain mandatory provisions provided within the legislation.

In Bill 65, as currently drafted, a PBC is defined as including charitable corporations, foundations, and all nonprofit corporations that receive more than \$10,000 in a year in arms' length donations or government grants, gifts, or financial assistance.

Issue: *This current definition means many membership-based nonprofit corporations may become a PBC automatically if they accept a single government contract for a relatively nominal amount; in turn, many nonprofit organizations serving the public benefit but receiving no government funding will not be deemed public benefit corporations. This is problematic for both groups.*

Upon receipt of a nominal government grant or contract, a member-benefit corporation is faced with more stringent audit provisions, an asset lock and other transparency and access obligations under the act for a period of three years. This will be enormously disruptive. On the other hand, nonprofit organizations providing public benefit without government support, that

want to be seen by the community as complying with the greater transparency and accountability requirements, are not included.

The problem is one of definition. It is not the source of funding that creates a public benefit corporation but the **intent to serve the public** through their activities that sets them apart.

Recommended Amendment: Replace the current definition of PBC, which includes the ‘test’ for nonprofit corporations of having received \$10,000 in a year from government or in arms’ length donations, with a **self-selection** test whereby the nonprofit corporation can choose to become a PBC (with inherent provisions of the designation) or remain a non-PBC. Charities will always be PBCs. Other organizations should **have the right to opt-in** to be a PBC. In this manner, organizations must decide whether the advantages and provisions associated with the PBC designation best serve the organization’s mission and structure. Once that option is exercised, there should be no ability to revoke it.

3.2 Preserving Assets for the Public Good

Here again we fully endorse the following position and recommendation with respect to Preserving Assets for Public Good as stated in the written submission of the Ontario Nonprofit Network, *with one minor exception*, as noted in the recommendation with government eliminated as a potential recipient of surplus assets at dissolution of a nonprofit organization.

Currently, Bill 65 only proposes a temporary, 3-year asset lock on a public benefit corporation’s assets.

Issue: This undermines the rationale behind the creation of the PBC designation, since a corporation can, after three years distribute its assets among membership. The intent of a nonprofit public benefit corporation is that the work of the corporation is for the public good in perpetuity and not for a limited time period.

Recommended Amendment: Amend Bill 65 to ensure a permanent asset lock on PBCs assets to provide assurance to the public that a public benefit corporation will **always** retain its assets in the public domain. Rather than distribute profits to members upon dissolution, surplus assets should go to registered charities or another PBC – all of which are committed to the long-term interest of the communities they serve.

It is important the PBC be able to gift to another PBC (as separate from charities) because many PBCs undertake valuable activities, but do not qualify for charitable registration. These activities would be lost if the only option is gifting to charities upon dissolution. We are pleased this provision is included under s.166(1)(d)(i)(b) of Bill 65 (page 78).

3.3 Ability to Access Community Bonds with Oversight

We fully endorse the following position and recommendation with respect to Ability to Access Community Bonds with Oversight as stated in the written submission of the Ontario Nonprofit Network

Currently, Bill 65 does not speak to community bonds, which have been identified as a key tool that will improve nonprofits' capabilities to solicit investments from the public for initiatives, such as capital projects, that generate community benefits.

Issue: *Charities and nonprofits in Ontario are exempted from the Ontario Securities Commission, but this leaves them without any process of review for bond offerings. The Ontario Co-operative Corporations Act, however, which governs the provinces cooperatives (who are also exempt from the Ontario Securities Commission), provides for a process of **review of offering statements** that will also suit the nonprofit sector. Most importantly, it would provide better assurance to the public looking to purchase community bonds. Finally, if both sectors use the same process, it will help to build a market for these community investments.*

Recommended Amendment: *Include in Bill 65 enabling legislation for issuing community bonds similar to that in the Co-operative Corporations Act. These provisions provide a measure of protection to potential purchasers of bonds. These provisions, which provide for the use of offering statements with government oversight, can be adapted to apply to nonprofit corporations in Bill 65. In this manner, nonprofit corporations can issue community bonds and the public can be confident of the risk assessment associated with their investment decision.*

4.0 Other Important 'Technical' Amendments

Below you will find additional recommended amendments to Bill 65 to ensure this legislation better reflects the sectors' practices and provides more clarity to this legislation.

4.1 Standard of Financial Review

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.

We submit that the \$100,000 threshold with respect to annual audits can and will place an unnecessary and excessive financial and administrative burden on the majority of Ontario's sport organizations.

To this end, we fully endorse the following position of the Ontario Nonprofit Network with respect to Standard of Financial Review:

Bill 65 would lower the revenue level at which a PBC can dispense with an audit from \$500,000 to \$100,000.

Issue: *Revised and strengthened audit standards - as a result of for-profit wrongdoing – have resulted in audits becoming more costly and complex in the nonprofit and charitable sectors. While we agree PBCs need to be accountable to their communities, this accountability must be reasonable and commensurate with the risk. We believe PBCs with **annual revenues under \$500,000** should be permitted to dispense with an audit in favour of a financial statement (or ‘review engagement’).*

This higher standard of financial review for PBCs, at a relatively low level of revenue, is an unnecessary and excessive burden for many smaller organizations. Moreover, the higher threshold is in line with the Canada Revenue Agency’s recommendation to charities that an annual audit be performed if revenues surpass the \$500,000 threshold.¹⁰

Technical Solution: *Eliminate the distinctions between PBC and non-PBCs found in subsection 75(1) with respect to audit exemptions; the revenue levels that exempt audits should be consistent across both types of organization at \$500,000.*

4.2 Directors and Membership Status

We endorse the following recommendation presented by the Ontario Nonprofit Network with respect to Directors and Membership Status:

Currently Bill 65 requires that at least two-thirds of directors of a nonprofit corporation must be members.

Issue: *While this requirement currently exists under the older legislation, the Ontario Corporations Act, there is no policy justification for such a mandatory provision. In many instances, it has been a source of inconvenience when an organization is found offside with the law for having failed to admit directors as members or failed to have them resign over many years of operation – a common oversight.*

Directors’ duties (e.g. act honestly, in good faith, etc.) are the same whether the director is a member or not. In short, this regulation is inconsistent with the goal to simplify the incorporation process. Saskatchewan, under their Non-Profit Corporations Act (1995), has no such provision and has not encountered difficulties resulting from directors not having to be members.

Technical Solution: *This regulation in subsection 23(3) of the proposed legislation should be deleted.*

4.3 Non-Voting Members

As the membership of many sport organizations includes children and youth, this legislation proposes that under certain circumstances, our children and youth members could exercise a vote, likely cast by parents and/or guardians. This is problematic. Typically these types of memberships are not intended to include voting rights; nor would these members have an economic interest in the Corporation.

As such, we strongly endorse the following recommendation presented by the Ontario Nonprofit Network with respect to Non-Voting Members:

Bill 65 currently would grant non-voting members voting rights in certain circumstances. If the non-voting members represent one-third of total membership, they can block the following fundamental changes:

- *Changes in membership rights*
- *An amalgamation*
- *Continuance to other jurisdictions*
- *An extraordinary sale, lease, or exchange of property*

Typically, public benefit corporations use the 'non-voting member' category to indicate an affiliation unrelated to corporate governance or economic rights within the corporation. This can include, for example:

- *Honourary members for long-term service to the corporation.*
- *Some professional sports organizations have a class of non-resident members, who can participate in the sport but not corporate rights.*
- *Some cultural institutions have non-voting members who pay a small yearly fee to access the institution for the year.*
- *Congregants in many churches are considered non-voting members*

Issue: *Allowing non-voting members voting rights makes sense where a member has an economic interest. However, **where non-voting members have no economic interest**, there is no policy rationale to grant these rights on fundamental change. In fact, there is concern that this legislation would enable non-voting members to vote against an increase in membership fees, which could constitute a change in membership rights. This presents a challenge of economic viability for nonprofits dependent upon membership fees to cover services to its members.*

Technical Solution: *Amend Bill 65 to provide voting rights to non-voting members only where the member has an economic interest in the corporation (subsections 110(3), 115(3) and 117(4)).*

Where non-voting members should have a vote on changes affecting their membership class, Bill 65 can provide for a default that a fee change (to cover the cost of benefits to the class) does not trigger a class vote (subsection 104(2)).

4.4 Use of Proxies

We fully support the following position put forward in the Ontario Nonprofit Network's written submission with respect to Use of Proxies:

Currently Bill 65 deems that every member entitled to a vote at a meeting of the corporation members may appoint a proxy holder to attend and act at the meeting with the authority conferred by the proxy.

Issue: *Many corporations are uncomfortable with proxies as they object to the possibility that someone who is not a member of the organization can be appointed as a proxy. In other instances, proxy voting may not be appropriate for the operation of the organization. Notably, proxies are not mandatory under the Canada Not-for-Profit Corporations Act or the Saskatchewan Non-Profit Corporations Act (passed in 1995).*

Technical Solution: *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.*

4.5 Director's Liability

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.

To this end, we fully endorse the position on Director's Liability put forward in the Ontario Nonprofit Networks written submission.

There are currently no provisions for a liability shield for directors and officers of nonprofit corporations in Bill 65.

Issue: *This fails to address a longstanding concern among directors (most of whom are volunteers) who often fear the personal costs they would incur should they face litigation. Insurance is often only practical for a small subset of the ~46,000 nonprofits that will fall under this legislation. Due diligence and good faith defenses are not much assistance except late in the litigation process. A statutory limitation on liability for directors and officers would be welcome by the sector.*

Furthermore, such protections would help to encourage participation in the sector and make Ontario's Act a more attractive governance structure if directors feel they may have adequate legal protection while carrying out their duties as directors of nonprofit corporations. Finally, this amendment would bring Ontario's legislation in line with the Saskatchewan Non-Profit Corporations Act (1995).

Technical Solution: Consider an additional subsection to subsection 46 of Bill 65 to limit the liability directors and officers are exposed to section 112(1) of the Saskatchewan Act could be used as a guide in drafting this provision.

4.6 Comments and Observations on Clause by Clause Review

We support the following comments put forward by the Ontario Nonprofit Network:

Comments include page number and subsection as per Bill 65, An Act to revise the law in respect of not-for-profit corporations, available from the Legislature of Ontario.

Abbreviations:

Ontario Cooperatives Corporations Act (1990) = 'Co-op Act'

Saskatchewan Non-Profit Corporations Act (1995) = 'Saskatchewan Act'

Page 6 - s.1: *under "Definitions", the definition of "charitable corporations" does not reflect the common-law definition of charity. Rather, Bill 65 appears to rely on a definition from s.1 (2) of the Charities Accounting Act. This is problematic because the reference to "public purpose could result in a corporation being deemed a charitable corporation within the meaning of this Act, but not meeting the common law definition used in other Canadian jurisdictions.*

Page 7 - s.1: *under "Definitions", change the definition for "public benefit corporation" from a test based on 'source of funds' to one of self-selection through the corporations by-laws*

Page 8 - *Definition of "special resolution" should not include reference to 'special meeting'; a "special resolution" can be considered at an AGM or other general meeting. Furthermore, a special resolution should always be passed by directors first, rather than revoked retroactively, as contemplated by s. 102(2) (Page 54).*

Page 14 – s. 17(3): *It is dangerous for a bylaw to take effect upon being passed by the board; it should await confirmation by members, as in the Co-op Act.*

Page 14 – s. 18(1): *Are default bylaws in place if set of organizational by-laws not adopted within 60 days of incorporation – or is there a continuance of by-laws for those transferring in to the new act?*

Page 17 – s.23 (3): *This clause requires individual members, as a corporation with only corporate members would still have to have a second class of members who are directors. The Co-op Act deals with this by permitting directors to be qualified if they are members, directors, officers or employees of members.*

Page 17 – s. 23(4): *Delete this clause regarding the limitation that not more than one-third of directors may be officers or employees of a PBC or affiliates (see this brief's pages 6-7 for discussion).*

Page 17 – s. 24(1): This clause states director selection is “by ordinary resolution” when it should be by ballot.

Page 17 – s. 24: There is no statement that the “first directors” are those named in the articles. Perhaps defining “first directors” as those named in the articles would suffice.

Page 18 – s. 26(1): The clause states that “members” may remove a director or directors. This should be clarified whether non-voting members are included in the implied “members”.

Page 18 – s. 27: Regarding the concept of an entitled “statement giving reasons” by the director resigning or opposed to their removal – the circulation requirement in s.27(2), where the “corporation shall immediately give members a copy of the statement”, needs further fleshing out similar to s.56 for proposals. Otherwise, there is significant potential for abuse.

Page 19 – s. 28(2): Is there a legal need to have some meetings of members described as “special”? A meeting can be described as a simple “meeting” in this instance.

Page 19 – s. 29: This clause proposes an interesting concept that a “person who manages or supervises management” is deemed to be a director if no directors are in office. Does that place responsibilities on that person that would be unacceptable - liability for wages, remittances, etc.?

Per s. 21 (Page 16), the directors “shall manage or supervise management”. This raises a question as to who that person referred to in s.29 (1) is then.

Page 22 – s. 35(1): A resolution approved by majority of directors by emails should also be permitted, unless any director objects.

Page 23 – s. 40(1): Currently, damages to employees for wrongful dismissal are not directors’ personal liability. However, with the terms “all debts”, it is implied that this could fall under directors’ personal liability. Delete “all debts” and limit the liability to unpaid wages and vacation pay.

Page 28 - s.64: Consider additional clause to limit the liability of directors and officers (see this brief’s pages 9 for discussion).

Page 32 – s. 51(5): Consider whether the appeal from a member’s discipline or membership termination should be to the membership first rather than the court, as in the Co-op Act.

Page 35 – s. 56: Clarify in the clause that a member’s proposal may only be for a matter within the jurisdiction of the members’ meeting to decide.

Page 38 – s. 60: Clarify in the clause that a requisition may only be for a matter within the jurisdiction of the members’ meeting to decide.

Page 39 – s. 64: Bylaws should be able to exclude proxies (see this brief’s pages 8-9 for discussion), and establish the maximum number than any one person may hold.

Page 40 – s.65: Consider deleting the mandatory solicitation of proxies in the clause. Many nonprofits are uncomfortable with proxies generally, and would not like them used more commonly.

Page 44 – s. 75: Given the significant and rising costs of audits for corporations, the exemptions from audit or review engagement requirements are now too low (see this brief's page 7 for discussion).

Page 48-9 – s. 88: The concept of distribution of “the fair value of membership” to a member on termination of membership is novel and problematic. This option should only be available on dissolution of corporations other than public benefit corporations. Otherwise, how would a corporation finance such a distribution? The Co-op Act has a provision for the repurchase of member's shares/member loans, but at the option of the co-operative, over five years, and even then, only if the co-op can afford it.

In addition, consider adding a more robust distribution constraint for PBCs. At a minimum include this in the clause, from the Saskatchewan Act:

Any profits or accretions to the value of the property of a corporation shall be used to further its activities.

Page 49 – s. 91(1)(i): This clause, which implies that directors have access to quarterly financial reports only, proposes a significant change; previously, directors were able to inspect all of the financial records of the corporation. While not often used, this was an effective tool for directors who are suspicious of wrongdoing. Is there a reason why this clause limits access to only quarterly reports?

Page 50 – s. 94(1): This clause would give creditors the right of access to information. Is this necessary?

Page 51 – s.96: This clause creates the obligation to collect – and keep – a written consent to serve from every director and officers. This is onerous and unlikely to be followed; it should only apply where the officer or director was not present at the meeting where they were elected/appointed.

Page 54 – s. 103(1): This clause specifies an “annual meeting” where, in fact, such a resolution as described (“proposed amendment”) can be passed at any members' meeting; delete “annual” from the clause.

Page 55 – s. 104(2): Ensure this clause does not enable non-voting members to trigger a vote over an increase in membership fees to cover costs of benefits to this class (see this brief's page 8 for discussion).

Page 79 - s. 166(6): The implication of the definition of “public benefit corporation” in s.1 and the deeming effecting of s.166 (6) is that a corporation that becomes a PBC during its fiscal year will not be PBC the following fiscal year, unless it again satisfies the test (source of funds) – otherwise, there is no provision by which a PBC can cease to be a PBC.

In addition, as pertinent to this clause, restrictions on distributions to its members will disappear after three fiscal years, even if the corporation received significant government funds, which it still retains in the form of surplus capital assets. This should be changed in order to ensure that a corporation permanently remains a PBC, and its assets remain in the public domain for perpetuity.

Page 88 – s. 186(7): *For non-public benefit corporations, this clause entitled dissenting members to a payment of fair value if they disagree with certain actions. Is this reasonable and necessary?*

Conclusion

SPORT4ONTARIO is proud to be a member of the second largest nonprofit sector in the world and largest provincial sector in Canada.

Again, we applaud the Government of Ontario for the consultative process it has taken to modernize the legislation with respect to not-for-profit organizations. This legislation is long over-due and most welcome.

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.

And finally, we request:

- 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
- That, once passed, a guide to this legislation be developed and made readily available, similar to that in place in Saskatchewan.

Thank you again for affording us the opportunity to present our views on Bill 65, An Act to Revise the Law with Respect of Not-for-Profit Corporations.