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COMMENTARIES ON ONTARIO CORPORATE LAW

Wayne D. Gray,
Release No. 5, June 2022

Publisher's Special Release Note 2021

The title of this work has been renamed to "Commentaries on Ontario Corporate Law". The pages in this work were reissued in January 2021 and all the pages carry that date in the release line. Please note that we have not reviewed the content on every page of this work in this current release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapters and headings have occurred.

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Gray's *Commentaries on Ontario Corporate Law* provides a current and comprehensive overview of the law and includes full annotations of the Ontario *Business Corporations Act*, the *Business Names Act*, the *Corporate Information Act*, the *Co-operative Corporations Act* and the *Extra-Provincial Corporations Act*, including all the regulations and prescribed forms for these statutes, as well as pertinent government publications.

This release features the addition of 15 new Memos for the Ontario *Not-for-Profit Corporations Act, 2010*. As well, new commentary is added to Part XVI and Part XVII of the Ontario *Not-for-Profit Corporations Act, 2010*.

Highlights

- **Appendix LM — Ontario Not-for-Profit Corporations Act, 2010 — Closed Membership Corporations under the ONCA** — This Memo explains the nature of a closed membership (or board-driven) board and membership structure and some of the reasons why a not-for-profit corporation (particularly a charitable corporation) might choose to adopt this structure. A closed membership corporation (also referred to as a board-driven or self-perpetuating structure, in contrast to a member-driven structure) is one where the board and the membership are comprised of an identical set of individuals. All individuals on the board of directors are members, and all members are on the board of directors.
- **Appendix LM — Ontario Not-for-Profit Corporations Act, 2010 — Reconciling the Supreme Court Rulings on Disciplining Members of Religious Organizations** — This Memo examines to what extent courts recognize the autonomy of religious organizations in expelling or otherwise disciplining members. Decided almost 26 years apart, the Supreme Court of Canada decisions in *Lakeside Colony of Hutterian Brethren v. Hofer* (1992 CarswellMan 138, 1992 CarswellMan 221) and *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall* ([2018] 1 S.C.R. 750, 2018 SCC 26, 2018 CarswellAlta 1044, 2018 CarswellAlta 1045) could not properly be considered companion decisions. Yet the striking similarities and marked contrasts in the two cases lend themselves to close study, as if they were companions. The different results in the cases highlight where the court draws the line between respect for the autonomy of a religious organization and an impermissible denial of natural justice for a disciplined member.
- **Appendix LM — Ontario Not-for-Profit Corporations Act, 2010 — Default Borrowing Powers of an ONCA Corporation** — This Memo explains why the requirement for member approval of a sale, lease or exchange, outside the ordinary course of its activities, of all or substantially all of the property of a corporation incorporated or continued under the Ontario *Not-for-Profit Corporations Act, 2010* does not apply to a secured lending transaction. Subsections 118(1) and (3) require the members of a corporation to approve, by special resolution, any sale, lease or exchange of all or substantially all of the property of the corporation other than in the ordinary course of its activities.

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