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**The Annual 2020
Church & Charity Law™ Webinar
Goes *Virtual* - November 5, 2020**

**REAL ISSUES FOR
VIRTUAL CORPORATE MEETINGS**

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 <p>CARTERS BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>2020 Annual Church & Charity Law Seminar™ Toronto – November 5, 2020</p>		
<p>Real Issues For Virtual Corporate Meetings</p> <p>By Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M.</p> <p>tman@carters.ca 1-877-942-0001</p> <p>© 2020 Carters Professional Corporation</p> <table border="0"><tr><td data-bbox="259 833 645 882">CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</td><td data-bbox="652 833 1209 882">Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca</td></tr></table>		CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001	Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca
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<p>SETTING THE CONTEXT</p> <ul style="list-style-type: none">• Charities and NFPs need to adjust how they hold board meetings and members' meetings during the COVID-19 pandemic because<ul style="list-style-type: none">– Limit on how many people can gather– Physical distancing– Directors' fiduciary duties to act in the best interest of the organization by balancing the need to comply with legal requirements against the need to protect the health and well-being of directors and members and not subject them to risk of virus infection• See Bulletin 466 http://www.carters.ca/pub/bulletin/charity/2020/chylb466.pdf <p>www.charitylaw.ca www.carters.ca</p>

ISSUES TO DISCUSS

				
Virtual vs hybrid meetings	Pros and cons	Legal requirements	IT platforms & meeting issues	Final TIPS

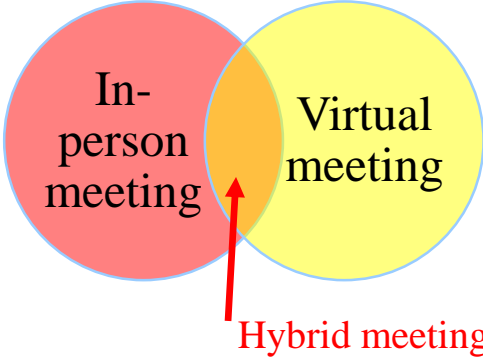
- Considerations apply to both board meetings and membership meetings
- No one-size-fits-all solution
- This presentation does not cover
 - Provincial rules - will refer to *Canada Not-for-Profit Corporations Act (CNCA)* and *Ontario Corporations Act (OCA)* as examples
 - Other COVID-19 related issues, such as deadlines to hold AGMs, whether AGMs can be postponed, how to use absentee voting options (e.g., proxy, mailed-in ballots, electronic voting), when to use written resolutions in lieu of meetings

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Virtual vs Hybrid Meetings

- In-person meetings - everyone attends in person
- Virtual meetings - everyone attends electronically
- Hybrid meetings – Some attend in person, others attend electronically



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Pros and Cons

Sometimes, it may not be suitable to hold an electronic members' meeting for various reasons, for example:

- Are there contentious matters to be decided involving heated debates with complex proceedings (e.g., multiple amendments from the floor on motions being decided, or nominations from the floor)?
- Is the organization accustomed to holding electronic meetings?
- Does the organization have large membership or constituents who are elderly, have disability issues, or do not have easy access to technology?


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	In person	Hybrid	Virtual
Address COVID-19 concerns	Poor	Fair	Best
Means of communication	Best	Fair	Fair
Relay complex information or deal with contentious issues	Best	Difficult	Difficult
Cost	Venue cost	IT platform cost	IT platform cost
Travel and accommodation cost	Yes	Yes (for in-person)	None
Flexibility and convenience	Depends	Depends	Depends
Level of preparation for meeting	Venue preparation	Venue and IT preparation	IT preparation
Limitation on participation	Difficult for those who reside far away	Difficult for those not tech savvy or lack access to technology	Difficult for those not tech savvy or lack access to technology
Security and privacy concerns	Low	High	High

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Legal Requirements

- Check to see if electronic meetings are permitted, and if there are special requirements

Corporations
– check:

Incorporating legislation

Articles / letters patent

By-laws

Unincorporated
- check:

Constitution

By-laws

Trusts
– check:

Trust indenture

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Examples – OCA and CNCA

1. Board Meetings

- Generally not an issue for OCA and CNCA directors to hold meetings by telephonic or electronic means

OCA

- Directors and committees of directors may meet by telephonic or electronic means if certain conditions are met, and the by-laws do not otherwise provide
- COVID-19 relief during “Temporary Suspension Period”
 - More flexible to hold board meetings electronically during emergency
 - Made March 30, 2020, retroactive to March 17, 2020

Normal s. 283(3.1) suspended during Temporary Suspension Period	New s. 283(3.1) temporary provision during Temporary Suspension Period
Directors may meet “by such telephone, electronic or other communication facilities” provided that all of the following conditions are met:	Directors may meet “by such telephone, electronic or other communication facilities” provided that the following is met:
(1) all the directors present at or participating in the meeting consent	{not required}
(2) the facility used permits “all persons participating in the meeting to communicate with each other simultaneously and instantaneously”	The facility used permits “all persons participating in the meeting to communicate with each other simultaneously and instantaneously”
(3) the by-law does not otherwise provide	The above mechanism can be used despite any provision in the letters patent, supplementary letters patent or by-laws that provides otherwise

CNCA

- Directors may participate in a meeting of directors or of a committee of directors “by means of a telephonic, an electronic or other communication facility” if all of the following conditions are met:
 - (1) If all the directors of the corporation consent
 - (2) The facility permits all participants to communicate adequately with each other during the meeting
 - (3) The by-law does not otherwise provide
- No relief from Corporations Canada for COVID-19 issues

2. Members’ Meetings

OCA

- COVID-19 relief to allow electronic members’ meetings

Normal s. 125.1(1) suspended during Temporary Suspension Period	New s. 125.1(1) temporary provision during Temporary Suspension Period
Members’ meetings be held by “telephonic or electronic means” and members may “through those means, votes at the meeting or establishes a communications link to the meeting”	Members’ meetings be held by “telephonic or electronic means” and members may “through those means, votes at the meeting or establishes a communications link to the meeting”
unless the by-laws provide otherwise	The above mechanism can be used despite any provision in the letters patent, supplementary letters patent or by-laws that provides otherwise

CNCA

- Hybrid meeting
 - Default - members are entitled to “participate by telephonic, an electronic or other communication facility” *if* the corporation provides such means
 - Corporation may prohibit hybrid meetings by opting out of such right in its by-laws
- Virtual meeting
 - Optional mechanism to meet by “an electronic or other communication facility”
 - Corporations that want to permit virtual meetings must opt in to such right in its by-laws
- Need to review by-laws to determine what types of meetings are permitted

- For both hybrid and virtual meetings, members may vote by means of a telephonic, electronic or other communication facility provided that the facility meets both of the following CNCA requirements:
 - enables the vote to be gathered in a manner that permits its subsequent verification
 - permits the tallied vote to be presented to the corporation without it being possible for the corporation to identify how the person voted
- Note that the same requirements apply to electronic voting at in-person meetings



IT Platforms & Meeting Issues

- When determining a suitable electronic platform for the meeting, considerations will need to be given to the technical capabilities of the platform
- Many platforms in the market, the platform being contemplated must meet the unique needs of each organization
- *Do due diligence to find suitable IT platform*
- Decide if you want to look for a short-term solution just for the COVID-19 pandemic or plan for the long-term to hold electronic members' meetings in future
- Electronic meeting must meet requirements for a valid meeting – below are examples of issues to consider

- **Notice of meeting** – proper information to be included in notice, timely delivery of notice, proper notice delivery method
- **Registration mechanism** - how to track attendee registrations, what if there are observer attendees?
- **Quorum count** - what if there is more than one voter that uses the same device to log in to the meeting, how not to include observers in quorum count
- **Absentee votes** – how to notify members of their right to cast absentee votes, how will they be cast, how will the votes be collected and tallied

- **Discussion at meeting**
 - Does the platform allow participants to communicate adequately with each other during the meeting to have a meaningful discussion ? [one-way live streaming is not a suitable platform]
- **Meeting procedure**
 - How would the chair have control of the meeting?
 - How would attendees participate and speak at the meeting and what protocol to follow?
 - How would moving, seconding, amending, and discussion of motions be handled?
 - How to handle motions from the floor?
 - How to ensure only one person has the floor at one time? How would the chair control who has the floor?

- **Collect and tally votes**
 - Can the CNCA requirements on how votes are to be gathered be met?
 - Is it necessary to use the meeting platform with a voting platform?
 - How would attendees vote and how would the votes be tracked?
 - How to track the voter only votes once? Can the voter change his vote?
 - How to deal with weighted votes (e.g., a person holding multiple proxies)
 - How to ensure the votes are secure?

- **Chair of meeting**
 - Plays a key role, calm and be in control of the meeting, be knowledgeable of the requirements
 - Helpful for a script be prepared ahead of time
 - Have a technical person nearby to help if necessary
- **Minutes**
 - Minutes must still be kept by a real person of the proceedings
 - Not good practice to treat a video/audio “recording” of an electronic meeting as the “minutes”
 - Prevent attendees from recording meeting without permission

- **Other meeting and IT logistics issues**
 - Is there a limit on how many persons can participate at the same time?
 - Is there a limitation on the maximum length of the meeting?
 - Are there special hardware and internet requirements?
 - Is software download required?
 - Will each voter have a dedicated log in & voting ID?
 - Is test run supported?
 - Is live technical support available?
 - Can the meeting be recorded and if so, how long will the recording be maintained?

- Are there costs involved in utilizing the platform?
- Will the platform be available after COVID-19 in case if the organization would like to continue holding electronic meetings?
- Adopt electronic meeting policy
- **Privacy and security issues**
 - Is log in secure? How to ensure the person who logged in is the “right” person? How to ensure others are not logged in or “listen in”?
 - If materials are distributed through the platform, is it secure?
 - Are the voting and tallying functions secure?
 - How is the privacy of the attendees maintained?

- **Examples of common meeting platforms**
 - GetQuorum
 - GoToMeeting
 - Zoom
 - Onstream Meetings
 - Broadbridge
 - ClickMeeting
 - Pragmatic
- **Examples of voting platform to use with meeting platform**
 - Election Buddy
 - Simple Survey
 - Simply Voting
 - Secured Voting



Final TIPS

- Know the legal requirements
- Choose hybrid vs virtual, decide if this is right for you
- Do due diligence to find an appropriate IT platform
- Adopt electronic meeting policy and workflow
- Ensure sufficient time to complete the logistics, think through the meeting step by step
- Give clear instructions to attendees
- Prepare the chair and meeting host
- Have technical person nearby to help if necessary
- Do rehearsals and test runs
- **PREPARE, PREPARE, PREPARE**

Have a
SUCCESSful
E-Meeting!

