

KEEPING CURRENT

November 2, 2023

Changes to *Corporations Act* Will Make it Easier for Social Clubs with Share Capital to Continue Under Separate Legislation

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Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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Requirements for Social Clubs to Continue Under Separate Legislation

Organizations that were incorporated or continued as social clubs with share capital under the Part II of the Ontario *Corporations Act* ("OCA") may soon find it easier to comply with the requirement to continue under a different piece of legislation by 2026. There are many non-profit companies with share capital in Ontario, including golf, tennis, curling and other social clubs, where at least some of the members hold shares in the company. These social clubs with share capital – also referred to as "social companies" – have until October 19, 2026 to continue under one of the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA"), *Business Corporations Act* ("OBCA"), or *Co-operatives Corporation Act* ("OCCA"), failing which they will be automatically dissolved as of October 20, 2026.¹

In order for a social company to avoid dissolution it must pass a special resolution to continue under one of the three specified Acts. A special resolution must be passed by the directors and by two-thirds of the votes cast at a general

¹ OCA s 2.1(2).

meeting of the shareholders or members of the corporation.² However, the OCA currently requires that each class of shareholders, including non-voting shareholders, must approve the special resolution by a separate vote.³ There is a further challenge in that certain classes of members may have difficulty reaching quorum, particularly with corporations established decades ago where the founding shareholders and their heirs no longer have a connection to the club and cannot be found.

Proposed Changes to the Continuance Process in Bill 139

In light of the challenges posed by requiring the approval of each class of shareholders, it is welcome news that [Bill 139, Less Red Tape, More Common Sense Act, 2023](#) proposes to amend the OCA so that a special resolution, while still requiring the approval of the shareholders, does not require the approval of each class of shareholders by a separate vote.⁴ This means that

² See definition of "special resolution" in OCA s 1(1) as well as s 2.1(1).

³ OCA s 2.1(4).

⁴ See Schedule 5. Bill 139 proposes to delete sub

only classes of shares with voting rights will be entitled to vote on the continuance. The Bill is expected to pass shortly and enter into effect and should make it much easier for social companies to continue under the ONCA, OCCA, or OBCA, particularly in light of the approaching deadline of October 19, 2026.

If a social company is not able to obtain a quorum to approve continuance, both currently and under the changes proposed by Bill 139, it may apply to the court for an order waiving the requirement for a special resolution, provided the court is satisfied that the social company has made reasonable efforts to locate shareholders and serve them with a notice of meeting.⁵

Steps to Prepare for the Transition

Share capital social clubs that have not already begun to prepare to continue under a separate piece of legislation should take steps to prepare to continue under one of the three specified acts. In particular, the following topics and issues should be discussed and, where necessary, legal advice obtained regarding:

- Identifying and locating shareholders;
- Identifying and locating key legal documents such as the letters patent of incorporation and the latest copy of the social company's bylaws;
- Considering which piece of legislation would be the best option for the social company to continue to, along with any related considerations that may be necessary, such as whether to operate on a not-for-profit or for-profit basis;
- The tax implications of cancellation of shares (if continuing under the ONCA) or continuing as a for-profit corporation (if continuing under the OBCA);

section 2.1(4) and to amend subsection 2.1(7) of the OCA to remove references to "each class of shareholders".
⁵ OCA s 2.1(7) and (8).

- Creating a process and timelines for the continuation of the club, along with drafting the necessary resolutions, articles and by-laws to effect this change; and
- Preparing a communication plan to reach out to and engage shareholders and members so that they are aware of the changes that will take place and the role that they play in the process.

We would be pleased to assist you with planning for and carrying out the continuance process. For more information, please feel free to contact [Cliff Goldfarb](#) or another one of our [non-profit and charity law specialists](#).

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